

TOWN OF NEW BOSTON, NEW HAMPSHIRE

ZONING ORDINANCE

**\*AMENDED**

March 12, 1991  
March 10, 1992 (Zoning Map only)  
March 9, 1993  
March 14, 1995  
March 12, 1996 (Zoning Map only)  
March 11, 1997 (Zoning Map only)  
March 10, 1998  
March 13, 1999  
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March 9, 2010  
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March 13, 2012  
March 12, 2013

Town of New Boston, New Hampshire

Zoning Ordinance

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**ADOPTED MARCH 13, 1990**

**ARTICLE I: PREAMBLE AND TITLE**

Section 101 Preamble

Pursuant to the authority conferred by Chapter 674, Sections 16 - 23 and 30 - 33-a, New Hampshire Revised Statutes Annotated, 1983, as amended, and in conformity with the Master Plan of New Boston, New Hampshire, this zoning ordinance is enacted and amended. Its purpose shall be to promote the health, safety, prosperity, convenience and general welfare of the inhabitants of the Town while also encouraging human and benevolent values and a spirit of community. We aim to do this by securing safety from fire, panic, and other dangers; providing fair and adequate areas between buildings and various rights-of-way; promoting efficiency, economy, and good civic design in the development and protection of the value of homes and green space; wise and efficient expenditure of public funds, and the adequate provision of public services. Likewise, we aim to be open to other means of enhancing the rural character and sense of community well being that may be deemed advisable in the future. (Amended March 13, 2001.)

Section 102 Title

This ordinance shall be known and may be cited as the "Revised Zoning Ordinance of the Town of New Boston, New Hampshire, March 13, 1990".

**ARTICLE II: ESTABLISHMENT OF DISTRICTS AND DISTRICT REGULATIONS**

Section 201 Establishment of Districts

The Town of New Boston hereby is divided into the following districts as shown on the official zoning maps:

IND	Industrial	
COM	Small Scale Planned Commercial	(Amended March 12, 2013.)
R-1	Residential One	
R-A	Residential & Agricultural	
MHP	Manufactured Housing Park	
F-C	Forestry and Conservation	(Amended March 13, 2001.)

Within these districts there are also established, as overlays, a Wetlands Conservation and Stream Corridor District, a Groundwater

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Resource Conservation District, a Floodplain District and a Steep Slopes Conservation District. The underlying permitted uses are allowed provided they meet the additional requirements of Sections 204.6 and the Floodplain Development Ordinance. (Amended March 13, 2001, March 8, 2005 & March 12, 2013.)

Section 202        Zoning Maps

The districts as established in Section 201 are shown on the map on file in the offices of the Town of New Boston, which map is a part of this ordinance. This map is titled "New Boston, N.H. Zoning Map". The Wetlands Conservation and Stream Corridor District, Groundwater Resource Conservation District and Floodplain District overlay maps, which are considered to be part of the Zoning Map, are also on file in the Town Offices. (Amended March 13, 2001 & March 12, 2013.)

Section 203        District Boundaries

A district boundary shown on the zoning map as approximately following the center line of a street, a shoreline of a body of water, or a property line, shall be construed as following such line. If the district classification of any land is in question, it shall be deemed to be in the more restricted adjoining district.

Section 204        District Objectives and Land Use Control

The following sub-sections set forth the objectives of each of the districts hereby established and the provisions of the regulations that apply respectively in each district. Any use designated as a "Permitted Use" in a particular district may be commenced in such district pursuant to Section 205 of this ordinance. Any use designated as "Special Exception" in a particular district may be commenced in such district pursuant to Section 206 of this ordinance. Explanations of the terms lots, dimensional requirements, and application of District Regulations are found in Sections 207-209, inclusive.

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Section 204.1 "IND" Industrial

Objective and Characteristics

This district provides a location for the establishment of plants to improve employment opportunities and broaden the tax base in the Town of New Boston. The district has good access to transportation facilities, and will not conflict with the uses of other areas. A variety of types of light manufacturing and offices are permitted, provided they are in keeping with the goal of making New Boston an attractive town, and provided the performance standards are met.

Uses

Permitted Uses

1. Any light manufacture, compounding, processing, packing, treatment, or warehousing of goods and products, provided the use meets standards of performance of this ordinance
2. Office
3. Newspaper
4. Printing/Copying
5. Accessory building or use
6. Warehouse or trucking terminal
7. Sawmill

(Table amended March 9, 2010.)

Allowed by Special Exception

1. Vehicular Sales Facility
2. Vehicular Repair Facility
3. Essential service
4. Auto service station
5. Contractor's yard
6. Research & Development Facility
7. Removal of earth products

Area and Dimensions

Minimum Lot Size

Area      Width

3 acres      \*\*

Minimum Yard Dimensions

Front      Each Side      Rear\*

50'      40'      40'

\*Where an industrial use abuts any residential district, the minimum rear yard shall be 50 feet.

\*\*Each lot shall accommodate a two hundred foot (200') minimum square at the front 50' setback line, to be placed at that setback parallel with the road.

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Section 204.2 Small Scaled Planned Commercial District (Amended March 9, 2010.)

Objective and Characteristics

The Small Scale Planned Commercial district shall provide area for shopping facilities, offices, banking facilities and other commercial operations. The area shall provide access, parking, adequate lighting, good design, and similar related items for convenience and safety. (Amended March 12, 2013.)

Uses

Permitted Uses

1. Retail Store
- 1a. Pharmacy
2. Restaurant
3. Museum and Gallery
4. Medical/Dental Clinic
5. Long Term Care Facility
6. Bank/Financial Institution
7. Office
8. Indoor and/or outdoor recreational facility
9. Health Club/Gym
10. Funeral Home
11. Newspaper
12. Printing/Copying
13. Hotel and Motel
14. Bed and Breakfast/Inn
15. Personal Services
16. General Service or Repair Establishment
17. Accessory Building or Use
18. Agriculture, Farm & Farming
19. Business Incubator
20. Veterinary Practice
21. Membership Club

(Table amended March 10, 2009.)

Allowed by Special Exception

1. Theater
2. Kennel
3. Contractor's Yard
4. Vehicular sales facility
5. Vehicular repair facility
6. Small engine repair facility
7. Auto service station
8. Car wash
9. Essential service
10. Private school
11. Day Care Center
12. Removal of earth products
13. Sawmill
14. Warehouse
15. Self-Storage Facility
16. Public use
17. Research & Development Facility

Areas and Dimensions

Minimum Lot Size

Area                      Width

3 acres                      \*\*\*

Minimum Yard Dimensions

Front                      Each Side\*                      Rear\*\*

50'                      20'                      40'

\* Where a commercial use abuts any residential district, the minimum side yard shall be 40 feet.

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\*\*Where a commercial use abuts any residential district, the minimum rear yard shall be 50 feet.

\*\*\*Each lot shall accommodate a two hundred foot (200') minimum square at the front 50' setback line, to be placed at that setback parallel with the road.

Note: Each principal building may have separate units in the building which may be occupied by a principal use in each unit, providing each use and unit meets all of the requirements of this ordinance, as well as any other codes and regulations of the Town of New Boston and State of New Hampshire.



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Section 204.3 "R-1" Residential One

Objective and Characteristics

The purpose of this district is to provide opportunities for mixed types of residential uses. Such districts usually have good road access and are usually convenient to public facilities such as schools and the fire station; and, having a high density soils potential rating as defined in the Master Plan.

Uses

Permitted Uses

1. One family dwelling
2. Two family dwelling
3. Multi-family dwelling\*
4. Accessory building or use
5. Agriculture
6. Open Space Development in accordance with the provisions of Article IV.

Allowed by Special Exception

1. Outdoor recreational facility
2. Funeral home
3. Hospital
4. Lodging house
5. Home business
6. Essential service
7. Manufactured Housing Park\*\*
8. Office
9. Public Use
10. Private school and/or day care center
11. Home shop
12. Family day-care home

(Table amended March 9, 2010.)

Area and Dimensions

Minimum Lot Size

Frontage

Minimum Yard Dimensions

<u>Use</u>	<u>Area</u>	<u>Width</u>	<u>Front</u>	<u>Each Side</u>	<u>Rear</u>
One family	1.5 ac.	150'	50'	20'	20'
Two family	2.0 ac.	200'	50'	20'	20'
Multi-family	2.5 ac.***	200'	50'	50'	50'

\* Home Business shall not be permitted to occur in multi-family dwellings.

\*\* In accordance with the standards specified in Sub-Section 204.5.

\*\*\* 2.5 acres for the first three (3) units, plus 0.5 acres for each additional dwelling unit up to a maximum of twelve (12) dwelling units.

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Notes: All lots shall accommodate a square, equal to the width of its minimum frontage requirement, at the 50' setback line and parallel to the road.

When related to Multi-family dwellings, no structure, unit, septic tank, leach field or connecting piping or associated appurtenances shall be constructed within one hundred fifty feet (150') of a body of water, or a wetland as defined in the Wetlands Conservation and Stream Corridor District to be poorly and very poorly drained soils associated with marshes, ponds, bogs, lakes, streams and rivers.

(Amended March 12, 2013.)

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Section 204.4 "R-A" Residential & Agricultural

Objective and Characteristics

This district provides for low density, rural living for permanent residents and an opportunity for seasonal residents to have a second home in the country. Types of factors limiting development are the remoteness from the town center, poor town roads often difficult to travel on during the spring, and large areas not suitable for on-site sewage disposal. Therefore in support of the overall goal of preserving the rural character of New Boston, there shall be one principal building and one principal use of the land and building in this district, with accessory and subordinate uses as is customarily related to the principal use of the land and building. (Amended March 9, 2010.)

Uses

Permitted Uses

1. Agriculture
2. Forestry
3. One or two family dwelling
4. Seasonal dwelling
5. Accessory building or use
6. Open Space Development in accordance with the provisions of Article IV\*\*
7. Home business
8. Family day-care home
9. Private school and/or day care center
10. Home shop
11. Public use
12. Boarding and/or riding stable
13. Expanded home business
14. Accessory Dwelling Unit

(Table amended March 9, 2010 & March 8, 2011.)

Allowed by Special Exception

1. Lodging house
2. Recreational Camping Park\*
3. Essential service
4. Removal of earth products
5. Hospital
6. Sawmill
7. Kennel
8. Outdoor recreational facility

Areas and Dimensions

Minimum Lot Size

Frontage

Minimum Yard Dimensions

<u>Lot</u>	<u>Area</u>	<u>Width</u>	<u>Front</u>	<u>Each Side</u>	<u>Rear</u>
Frontlot	2 acres	***	50'	20'	20'
Backlot	5 acres	50'****	--	20'	20'

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- \* In accordance with the standards specified in Section 402.
- \*\* Home business as defined in this ordinance shall not be permitted to occur in Open Space Developments. However, Home Occupations are permitted as defined in Article IV, Section 401, Open Space Development Standards. (Amended March 9, 2010.)
- \*\*\* Each frontlot shall accommodate a two hundred foot (200') minimum square at the front 50' setback line, to be placed at that setback parallel with the road. Backlots shall only require a 200' minimum square somewhere within the lot.
- \*\*\*\*The 50' backlot frontage strip shall be capable of having a driveway installed thereon. (Added March 12, 2002.)

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Section 204.5 "MHP" Manufactured Housing Parks

Objective and Characteristics

The purpose of this provision is to allow the use of manufactured housing units under conditions intended to enhance affordable housing opportunities. All improvements deemed necessary for the health, safety, welfare, and prosperity of the Manufactured Housing Parks and Units shall be promulgated under the Subdivision Regulations. The following regulations shall apply with respect to manufactured housing parks and manufactured housing units in such parks:

- A. A manufactured housing park shall have an area of not less than 15 acres.
- B. A manufactured housing park may have up to one (1) conventionally built residence therein.
- C. Each manufactured housing space shall be at least 15,000 square feet in area, shall be at least 150 feet wide by at least 100 feet in depth, and shall front on an access road.
- D. All interior roads within a manufactured housing park shall have a right-of-way at least 50 feet in width and have a surfaced travel width of at least 22 feet. Paved roads, driveways and walkways shall be provided. All interior roads within a manufactured housing park shall be built to Town standards as specified in Section VIII "Improvement Construction Requirements" of the New Boston Subdivision Regulations and shall be deeded to the Town at the developers expense, after complete acceptance of the road by the Selectmen, et al.
- E. Two parking spaces, each at least 10 feet wide by 22 feet long, shall be provided for each manufactured housing space and shall be paved.
- F. At least ten percent of the total area of each park shall be reserved for recreation and other open space purposes to serve the needs of the residents of the park.
- G. A 4 inch reinforced concrete pad shall be provided for each manufactured housing unit. The length and width of the pad shall be sized to accommodate the size of the unit to be placed thereon.
- H. Each manufactured housing space shall have an attachment for water supply. The water supply source must meet all local and state regulations.
- I. Each manufactured housing space shall have an attachment for sewage disposal. The method of sewage disposal must be in

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compliance with all local and state regulations. However, it shall not be located on the manufactured housing space or on any adjacent manufactured housing space. Lots containing sewage disposal systems shall not be considered as part of the open space requirement. No structure, manufactured housing unit, septic tank, leach field or connecting piping or associated appurtenances shall be constructed within one hundred fifty feet (150') of a body of water, or wetland as defined in the Wetlands Conservation and Stream Corridor District to be poorly or very poorly drained soils associated with marshes, ponds, bogs, lakes, streams and rivers. (Amended March 12, 2013.)

- J. All manufactured housing shall conform to the "Manufactured Home Construction Safety Standards Code" of the U.S. Department of Housing and Urban Development or successor organization.
- K. Each manufactured housing space shall be provided with a storage building having 100 square feet of floor area. All buildings on the space shall be at least 20 feet apart.
- L. No manufactured housing unit shall be closer than 50 feet to a public street right-of-way line. A manufactured housing unit including any attachment thereto such as carports, etc., and all accessory buildings shall be located on the space so that it and they are at least 30 feet from the right-of-way of the interior road and 20 feet from any lot line of the space.
- M. A strip of land at least 30 feet in width shall be maintained as a landscaped area abutting all park property lines.
- N. Provision for safe and sanitary disposal of household garbage and rubbish shall be made, as approved by the Planning Board under Site Plan Review.
- O. An electrical source supplying at least 100 amps, 120/240 volts, shall be provided for each space. The installation shall comply with all applicable state and town electrical laws and regulations. Such electrical outlets shall be weather proof. The use of underground utility installation shall be required unless waived by a special exception by the Board of Adjustment.
- P. Water, sewage and underground utility lines that run under the road shall be sleeved, and acceptable to the Road Agent.
- Q. In the event that the developer or owner of the common land area(s) and improvements, or any successor owners shall, for any reason, fail to maintain the lands and improvements in reasonable order and condition in accordance with the approved final plan, the Board of Selectmen shall serve written notice upon the owner, or his heirs and assigns, setting forth the deficiencies in the

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maintenance, order and condition of the open space and/or improvements. Such notice shall include a demand that said deficiencies be cured forthwith and that a statement of intent to comply and a date of compliance shall be filed with the Board of Selectmen within fourteen (14) days of said notice, unless it pertains to safety or health in which case the Selectmen may take immediate action. If such maintenance shall not have been performed or said statement of intent shall not have been filed by the stated time, the Town, in order to preserve the taxable values of the properties within the Manufactured Housing Park and to prevent nuisance, may enter upon the common area and/or improvements and maintain such area and/or improvements for a period of not more than one (1) year. Said entry and maintenance shall not vest any rights in the general public to the use and enjoyment of the common area and/or improvements. Before the expiration of that period, the Town shall, upon its initiative or upon the request of the owner theretofore responsible for the maintenance, call a public hearing to be held by the Board of Selectmen. Notice of such hearing shall be given to the owner of the development. At that hearing, the owner of the development shall show cause why such maintenance by the Town shall not, at the election of the Town, continue for a succeeding year or other designated period. If the Board of Selectmen shall determine that the owner is not ready and able to maintain said common area and/or improvements in a reasonable condition, the Town may, in its discretion, continue to maintain said common area and/or improvements during the next succeeding year and subject to a similar hearing and determination, during each succeeding year thereafter. The decision of the Board of Selectmen in any such case shall constitute a final administrative decision.

The cost of such maintenance by the Town shall be assessed against the park owner, and shall become a tax lien on said property. At the time of entering upon said common area for the purpose of maintenance, notice of such lien shall be filed in the Office of the Hillsborough County Registry of Deeds.

- R. Each unit shall have a light post at the street end of each driveway, with a sign attached to each post identifying the owner's name and street number of each unit, of a design to be approved by the Planning Board.
- S. One Family Dwellings are permitted in the "MHP" Manufactured Housing Parks zoning district, without application of manufactured housing park restrictions described herein. Area, Density, and Dimensional requirements for One Family Dwellings in the "MHP" Manufactured Housing Park zoning district shall be the same as established for One Family Dwellings in the "R-1" Residential One Zoning District. (Section S. added by petition March 14, 2006.)

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Section 204.6     Wetlands Conservation and Stream Corridor District (District  
amended March 13, 2007.)

A. Authority and Purpose

By the authority granted in RSA 483-B:8, 674:16-17 and 674:20-21, in the interest of public health, safety and general welfare, and consistent with the goals and objectives of the New Boston Master plan, and the Piscataquog River Management Plan, the New Boston Wetlands and Stream Corridor Conservation District is hereby enacted to regulate the uses of lands associated with ponds, streams, and wetlands, and in the transitional upland fringe adjoining them.

1. To encourage preservation and maintenance of fields, forests, wetlands, river front, river beds, and wildlife corridors, consistent with the Land Use Goals of the New Boston Master Plan adopted September 12, 2006.
2. To protect river and stream corridors, reduce or eliminate impacts from leach fields, and non-point sources of pollution, to protect spawning and rearing habitats, protect threatened, endangered and sensitive species dependant on our aquatic habitats, and promote stewardship of our aquatic resources, consistent with the "Piscataquog River Management Plan", adopted under the New Boston Master plan.
3. To protect and encourage agriculture and forestry in recognition of their contributions to the food supply, economy, aesthetics, natural environment, wildlife habitats, history, and traditions of New Hampshire, consistent with RSA 672:1.
4. To protect, to the greatest extent possible consistent with the foregoing, the existing property rights of landowners who have constructed structures and commenced, before the effective date of this amendment, land uses that might otherwise be constrained or effected hereby.
5. To control the development of structures and land uses on streambanks and naturally occurring wetlands which would contribute to the pollution of surface and groundwater.
6. To prevent the destruction or alteration of natural wetlands which provide flood protection, groundwater recharge, pollution abatement, and the augmentation of stream flow during dry periods, and which are important for such other reasons as those cited in RSA 482-A:1.
7. To prevent unnecessary and excessive expenses to the town for providing and maintain essential services and utilities; which



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expenses arise because of unwise use of streambanks, wetlands, and the transitional upland fringe.

8. To encourage those uses that can be appropriately and safely located on or near streambanks and in wetland areas.
9. To preserve and enhance those aesthetic values associated with the ponds, streams and wetlands of this town.

B. District Boundaries

1. The New Boston Wetlands and Stream Corridor Conservation District is defined as those areas in New Boston that contain, or are within the setback distances prescribed herein from perennial streams, and rivers; Great Ponds, ponds, and lakes; poorly drained soils; and wetlands including bogs, marshes, and vernal pools, as defined herein, or by Statute.
  - a. Wetlands are defined, consistent with State and Federal law, as areas inundated or saturated by surface water or groundwater at a frequency or duration sufficient to support, and that under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions. See RSA 482-A:2, X; 674:55; and Env-Wt 301.01(a), (c), (d), (f).
  - b. Perennial Streams shall mean a water course in a well defined channel that contains water year round during a year of at least average precipitation. A perennial stream exhibits typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.
  - c. Vernal Pool shall mean a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, provides essential breeding habitat for certain amphibians and invertebrates, and is free of adult fish populations.
  - d. This section shall **not** apply to isolated wetlands of less than 2,000 square feet, nor to erosion control structures such as sediment basins and diversion ditches, nor to low-impact development practices such as bio-filters, detention and retention ponds, infiltration trenches, and drainage swales.
2. To supplement and assist with locating, but not to define the District as defined above, the map designated as the "Town of New Boston Wetlands and Stream Corridor Conservation District Map" as

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it may be, from time to time, updated is hereby deemed to be a part of the official Zoning Map of the Town of New Boston.

3. The location and limits of wetlands shall be determined through field delineation done by a NH Certified Wetland Scientist, performed consistent with the State of New Hampshire's approved method codified at Env-Wt 301.01 (a), (c), (d), (f) as it may hereafter be, from time to time, amended.

C. General Provisions

1. Boundary Appeals. In the event that the Building Inspector or the Conservation Commission questions the validity of the boundaries of a wetland area on a specific parcel of land, or upon the written petition of the owner or any abutter of the said property to the Planning Board, the Board may call upon the services of a certified wetland scientist to examine said area and report his or her findings in writing to the Planning Board for the determination of the boundary. The cost of such an appeal shall be borne by the applicant.

"Certified Wetland Scientist" means a person qualified in wetland delineation and mapping who is so licensed and certified by the State of New Hampshire Joint Board of Licensure and Certification.

2. Building Site Location and Lot Size Determination. Areas designated as having "poorly drained soils" may be used to fulfill up to 25% of the minimum lot size required by town ordinances and subdivision regulations, provided that the minimum non-wetland area is contiguous and sufficient in size and configuration to adequately accommodate the primary structure and all required utilities such as sewage disposal and water supply, including primary and auxiliary leach field locations. This minimum contiguous dryland area shall be the required building site with accommodating utilities thereon. All contiguous areas shall be a minimum of 50 feet in width in order to be considered contiguous. Building envelopes may be required to be shown on the subdivision or site plans at the discretion of the Planning Board. Backlots, which are allowed in the R-A district, shall be required to comply only with the minimum area requirements of a frontlot.

No part of areas designated as having "very poorly drained" soils, or bodies of water, may be used to satisfy minimum lot size.

At the discretion of the Planning Board, the determination of the minimum lot size may be based upon either a delineation of the poorly drained soils performed by a Certified Wetland Scientist, or a site specific soil survey conducted by a Certified Soil Scientist. The cost of such an appeal shall be borne by the applicant.

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"Certified Soil Scientist" means a person qualified in soil classification and mapping who is so licensed and certified by the State of New Hampshire Joint Board of Licensure and Certification.

"Poorly drained" soils shall mean those soils so classified consistent with "Field Indicators for Identifying Hydric Soils in New England", Version 3, April 2004, as it may be from time to time revised and updated.

"Very poorly drained" soils shall mean those soils so classified consistent with "Field Indicators for Identifying Hydric Soils in New England", Version 3, April 2004, as it may be from time to time revised and updated. "Very poorly drained" soils are indicative of wetlands.

3. Changing Water Levels in Wetland Areas. No person shall raise or lower any water level within a designated wetland area by dredging, filling, creating, or removing any man-made or naturally occurring dam or obstruction unless and until all necessary permits to do so have been applied for and issued by all appropriate authorities having jurisdiction. In addition to any other penalties, if any wetland area should be drained or filled without the necessary permits therefor having been obtained the area so drained or filled shall continue to be designated a wetland area unless and until all necessary permits have been issued, and a written determination is made by the USDA Natural Resource Conservation Service stating that the area in question no longer qualifies for wetlands designation.
4. Setback Distances:
  - a. No septic tank or leach field shall be constructed or installed within 75 feet of any perennial stream, pond, or wetland, or within 50 feet of any poorly drained soils.
  - b. No new structure, as defined in Section 602 of this Ordinance, shall be constructed within 50 feet of any perennial stream, pond, lake or wetland; provided that the Planning Board may, at its discretion, and considering any input from the Conservation Commission, increase this setback to a maximum of 100' based on soil science and the following considerations:
    1. When the water resource to be protected is within the Groundwater Resource Conservation District; see Section 204.7.
    2. When the water resource to be protected is a headwater stream, to protect trout and salmon habitat.

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3. When the water resource to be protected is a current or potential future drinking water supply for the Town.
4. When the water resource to be protected is a wetland of a type particularly sensitive to the addition of nutrients, such as a bog, fen, or Atlantic White Cedar swamp.
5. When the water resource to be protected is a known or suspected habitat for threatened or endangered species.
6. When the water resource to be protected is a Prime Wetland, designated as such under RSA 482-A:15; on a list as may be from time to time created and updated by New Boston.

At the discretion of the Planning Board a non-foundation structure may be constructed within the designated set back specified herein.

- c. Where existing, a natural woodland or vegetative buffer shall be maintained within the setback designated in Paragraph C.4.b. above, between the new structure and any perennial stream, pond, lake or wetland.
  1. A natural woodland or vegetative buffer means a forested or vegetated area consisting of various species of indigenous trees, saplings, shrubs, and ground covers in any combination and at any stage of growth. For the purposes of this section, "maintained" shall mean the avoidance of clear cutting or complete removal or replacement with a lawn; however, clearing of some undergrowth, limited non-lethal limbing of trees to clear a view, the creation of foot paths to the water, the replacement of some shrubs with other native species of groundcover, the removal of trees or limbs that present an imminent threat to safety or property, and the removal of diseased or dangerously damaged trees shall be permitted so long as such actions preserve the natural root systems of the trees and an understory vegetated by native species of shrubs and groundcovers. (Amended March 9, 2010.)
- d. For the purpose of these setbacks, distances shall be measured as follows: for natural ponds, from the ordinary high water mark; for artificially impounded fresh water bodies, from full pool as measured from the elevation of the spillway crest; for perennial streams, from the ordinary high water mark.
- e. The purposes of these setbacks shall be to preserve the functions and values of our wetlands, surface, and ground waters, by minimizing alteration or destruction thereof by

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filling or dredging, erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish, amphibian, and wildlife habitat, and respecting and preserving the natural ecosystems and resources we wish the next generations to enjoy as much as we do.

- f. The above setback distances are based on the "Buffers for Wetlands and Surface Waters, a Guidebook for New Hampshire Municipalities", May, 1997.

D. Permitted Uses

- 1. Poorly Drained Soils. Permitted uses in areas of poorly drained soils are as follows:
  - a. Agriculture, including grazing, hay production, truck gardening and silage production provided that such use is shown not to cause significant increases in surface or groundwater contamination by pesticides or other toxic or hazardous substances and that such use will not cause or contribute to soil erosion.
  - b. Forestry and tree farming to include the construction of access roads for said purpose.
  - c. Wildlife habitat development and management.
  - d. Recreational uses consistent with the purpose and intent of this Section as defined in Part A.
  - e. Conservation areas and nature trails.
  - f. Water impoundment and the construction of well water supplies.
  - g. Drainage ways to include streams, creeks, or other paths of normal runoff water and common agricultural land drainage.
  - h. Any use otherwise permitted by the Zoning Ordinance and state and federal laws that does not involve the erection of a structure or that does not alter the surface configuration of the land by the addition of fill or by dredging except as a common treatment associated with a permitted use.
  - i. If roads or other access ways are required in order to plant or harvest agricultural or forest products, or if pipelines have to be buried or poles or transmission towers have to be erected, and if access ways have to be provided to allow construction and future maintenance, and if dredging and filling is required, then

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a Conditional Use Permit shall be required under the provisions of Part E to cover the dredging and filling.

2. Very Poorly Drained Soils. Permitted uses in areas of very poorly drained soils, wetlands, marshes, bogs, open water and major streams are as follows:
  - a. Uses specified under Part D-1 (a through h) shall be permitted except that no alteration of the surface configuration of the land by filling or dredging and no use which results in the erection of a structure, except as provided for in Part D-2 (b) below, shall be permitted.
  - b. The construction of fences, footbridges, catwalks and wharves only, provided: (1) said structures are constructed on posts or pilings so as to permit the unobstructed flow of water; (2) the natural contour of the wetland, marsh, bog, stream, or pond is preserved; and, (3) the Planning Board has reviewed and approved the proposed construction by issuance of a Conditional Use Permit.

E. Conditional Uses (Section amended March 12, 2013.)

1. A Conditional Use Permit issued by the Planning Board (RSA 674:21,II) shall be required for the construction of roads and other access ways, and for utility pipelines, powerlines, and other transmission ways provided that all of the following conditions are found to exist:
  - a. The proposed activity minimizes the degradation to, or loss of, wetlands and wetland buffers, and compensates for any adverse impact to the functions and values of wetlands and wetland buffers. Items to be considered include the capacity of the wetland to: support fish and wildlife; prevent flooding; supply and protect surface and ground waters; control sediment; control pollution; support wetland vegetation; promote public health and safety; and, moderate fluctuations in surface water levels.
  - b. The proposed activity will have no substantive negative environmental impact to abutting or downstream property and/or hydrologically connected water and/or wetland resources. Items to be considered include: erosion; siltation; turbidity; loss of fish and wildlife; loss of unique habitat having demonstrable natural, scientific, or educational value; loss or decrease of beneficial aquatic organisms and wetland plants; dangers of flooding and pollution; destruction of the economic aesthetic, recreational and other public and private uses and values of the wetlands to the community.

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- c. The proposed activity or use cannot practicably be located elsewhere on the site to eliminate or reduce the impact to the wetland or its buffer.
- d. The proposed activity utilizes applicable best management practices.
- e. The burden of proof relative to the criteria listed above is upon the applicant and may be submitted as part of the required site plan or in a separate narrative report.

2. Completed Conditional Use Permit Application

- a. A completed application must include sufficient information to allow the Board to proceed with consideration and to make an informed decision.
- b. The following shall be required for, and constitute, a completed Conditional Use Permit Application:
  - i. An application for Conditional Use Permit and Checklist to be provided by the Planning Board and properly filled out and executed by the applicant. In the event that the applicant is not the owner of record, the owner of record must also sign the application form in the space provided. The application form and checklist shall be filed with the Office of the Planning Board/Planning Department in accordance with Section 204.6.E.4.
  - ii. A list of names and mailing addresses which shall include the applicant; the owner, if different from the applicant; all abutters as indicated in town records (a cross-check with the Hillsborough County Registry of Deeds is advisable); holders of conservation, preservation or agricultural preservation restrictions as defined in RSA 477:45, compiled not more than five (5) days before the date of delivery of the application; and the name and business address of every licensed professional whose seal appears on the plan.
  - iii. A check payable to the Town of New Boston to cover filing fees, mailing, advertising, and other reasonable costs as provided in Section 204.6.E.10.
  - iv. Four (4) paper print copies and eight (8) legible 11" x 17" copies of the site plan prepared by a surveyor licensed in the State of New Hampshire or a professional engineer, and including, but not limited to the requirements in Section 204.6.E.3.

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**Note: Plans or other documents that include a copyright notation shall expressly exempt the Town of New Boston from such copyright restrictions and shall allow copying of said plans or other documents as needed by the Town to perform the functions set forth in this ordinance.**

- c. The following items are not required for a completed application, but are required for final approval. The Board may grant final conditional approval contingent upon receipt of the following additional items if required for the subject application:
  - i. Construction estimates, including the proposed form and amount of the performance security to be submitted to the Town of New Boston.
  - ii. Driveway Permit(s) if required by any other rule, statute or regulation.
  - iii. Any and all other approvals and/or permits from local or state agencies, as required, including, but not limited to, State of New Hampshire Wetland Bureau Dredge & Fill Permit, and, State of New Hampshire Alteration of Terrain (AoT) Permit as governed by RSA 485-A:17, submission of such approval to the Board to include a set of the plans approved by the State under that permitting process.
- d. If the Planning Board requires the review of material by an outside consultant, or the creation and submission of special studies, the cost of same shall be borne by the applicant.
- e. The Planning Board may require additional submission items as it deems necessary to review the application.
- f. The Applicant bears the burden of persuasion, through submission of sufficient evidence and testimony that the proposed work will satisfy the specific requirements and conditions established in this ordinance.

3. Conditional Use Permit Plan Layout

The Conditional Use Permit site plan shall be submitted in the number of copies specified in Section 204.6.E.2.iv. The plan should show, or be accompanied by such forms of, the following information as the Board may deem applicable:

3.1 Existing Data and Information

- a. Location of site (Locus Map) showing main traffic arteries and north arrow.



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- b. The boundary lines of the lot, including bearings and distances, and the area of the lot in acres.
- c. Tax Map and Lot Number, names and addresses of owners of record, abutting land owners indicated in the New Boston town records (a cross-check with the Hillsborough County Registry of Deeds is advisable) not more than five days before the day of filing, and all holders of conservation, preservation or agricultural preservation restrictions as defined in RSA 477:45, and the New Hampshire Department of Environmental Services Dam Bureau, as necessary (see RSA 676:4, I, (d), (2)).
- d. Name and address of every engineer, land surveyor, wetland scientist, soil scientist, or other professional, licensed in the State of New Hampshire whose professional seal appears on the plan.
- e. The graphic and written scale of the plans; date of plan preparation and revision; north point.
- f. The size, shape, height and location of existing structures located on the site.
- g. Driveways within 200 feet.
- h. The existing grades, drainage systems, structures and topographic contours at intervals not exceeding five feet.
- i. Existing public and private utilities and infrastructure (including septic systems and wells) and all existing landscaping. This shall include the location and size of existing public utilities and infrastructure that are located off-site, with which connection is planned, or located within 100 feet of the site.
- j. Natural features such as, but not limited to, steep slopes, streams, marshes, lakes or ponds, ledge outcroppings and vegetation. Manmade features such as, but not limited to, existing roads and structures, culverts, and road crossing culverts.
- k. One hundred year flood elevation line shall be included, where applicable.
- l. Soils information for design purposes from a National Cooperative Soil Survey (NCSS) soil series map, or a Site Specific Soils Map prepared in accordance with Section V-T of the Subdivision Regulations.

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3.2 Proposed Plan and Information

- a. Proposed grades, drainage systems, and topographic contours at intervals not exceeding five feet.
- b. Proposed structures such as culverts and headwalls, their size, shape, height and location.
- c. The size and location of proposed public and private utilities and infrastructure.
- d. A stormwater management plan as specified in Section V-U of the Subdivision Regulations, including plans for retention and slow release of stormwater where necessary.
- e. Area of encroachment into the wetlands in acres and square feet.
- f. If the Conditional Use Permit application is related to a road or driveway, profiles and cross sections at every 50 feet.
- g. Construction details, as well as a construction sequence, including, but not limited to temporary and/or permanent erosion control measures.
- h. A plan note regarding the required Conditional Use Permit Compliance Statement as noted in Section 204.6.E.9.
- i. Sign off block for Board approval. Endorsement statement shall read: "Conditional Use Permit Site Plan approved by the New Boston Planning Board on \_\_\_\_\_.  
Certified by, \_\_\_\_\_, Chairman, and by  
\_\_\_\_\_, Secretary."

4. Filing and Submission of Completed Conditional Use Permit Application

- a. The completed application shall be filed with the Office of the Planning Board/Planning Department at least 15 days prior to a scheduled public meeting of the Board, as provided for in this Section.
- b. The completed application shall be formally submitted to and accepted by the Board only at a regularly scheduled public meeting after due notification to the owner, applicant, abutters, holders of conservation, preservation and agricultural preservation restrictions, and, every licensed professional whose seal appears on the plans, and

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the general public of the date the completed application will be submitted to and heard by the Board.

- c. The Board shall reject all applications not properly completed and shall render a written decision pursuant to RSA 676:3 describing the information, procedure or other requirement necessary for the application to be complete. In addition to notifying the applicant, the decision shall be placed on file in the Office of the Planning Board/Planning Dept. and made available for public inspection within 5 business days after the decision is made.
- d. An application shall not be considered incomplete solely because it is dependent upon the issuance of permits or approvals from other governmental bodies; however, the Planning Board may condition approval upon the receipt of such permits or approvals in accordance with Section 204.6.E.2.c.
- e. Applications may be disapproved by the Board without a public hearing on grounds of failure of the applicant to supply any information, pay fees, or meet any reasonable deadlines required by these regulations or the Board. A Notice of Denial shall be provided indicating the reason(s) for disapproval and said Notice shall be placed on file in the Office of the Planning Board/Planning Dept. and made available for public inspection within 5 business days after the decision is made.

5. Board Action on Completed Conditional Use Permit Application

- a. The Board shall, at the next regular meeting or within 30 days of its delivery to the Office of the Planning Board/Planning Department for which notice can be given in accordance with Section 204.6.E.7, determine if the submitted application is complete, and shall vote upon its acceptance. The Board shall act to approve, conditionally approve or disapprove the completed application and final plat within 65 days after the determination of the completeness of the application, subject to extension or waiver as provided for in accordance with RSA 676:4, I(f), as amended.
- b. No construction, building or improvements shall occur on any lands included in the final plan submission until final or conditional approval of a completed application has been granted.

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- c. In the case of disapproval of any plat submitted, the grounds for such disapproval shall be adequately stated in the records of the Planning Board.
- d. In the event that conditions precedent or subsequent are a condition of final approval, no bonds or other security shall be released until all conditions precedent or subsequent have been met, and, a Conditional Use Permit Compliance Statement has been received, or, if required under Section 204.6.E.6, a compliance hearing is held.
- e. Notwithstanding any final approval, no occupancy permits for structures accessed via the access way constructed under the Conditional Use Permit shall be issued until satisfactory completion of all conditions precedent and/or subsequent is confirmed by the Board, except upon such terms as the Planning Board may have authorized as part of its decision approving the plan, and failure to satisfy conditions required may constitute grounds for revocation of approval.

6. Public Hearings

- a. Before the Conditional Use Permit application is approved or disapproved, a public hearing shall be held as required by RSA 676:4, I, (e) and notice to the owner, applicant, abutters, holders of conservation, preservation and agricultural preservation restrictions, and every licensed professional whose seal appears on the plans, and the general public shall be given in accordance with Section 204.6.E.7. The Conditional Use Permit application hearing may occur simultaneously with a Subdivision or Non-Residential Site Plan Review.
- b. The Planning Board will consider the Applicant's responses to the conditions under 204.6.E.1, above. The Planning Board may also consider the impacts of the application on the public health and safety of the community as well as the adequacy of existing or proposed public utilities. The proposed work shall not necessitate unreasonable public expenditures to provide sufficient public services.
- c. If the Board places a condition precedent on the approval (one to be fulfilled before construction can commence, such as obtaining an easement, posting a bond, etc.) such approval shall become final without further public hearing being required, upon evidence submitted by the applicant of the satisfactory compliance with the conditions imposed. This may occur only when the conditions precedent are:

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- i. Minor plan changes whether or not imposed by the Board as a result of public hearing, compliance with which is administrative and which does not involve discretionary judgment; or,
  - ii. Conditions which are in themselves administrative and which involve no discretionary judgment on the part of the Board; or,
  - iii. Conditions with regard to the applicant's possession of permits and approvals granted by other boards or agencies, including State and federal permits.
- d. Such conditions may include a statement notifying the applicant that an approval is conditional upon the receipt of State or federal permits relating to a project, however, the Planning Board may not refuse to process an application solely for lack of said permits.
- e. All conditions not specified in this section as minor, administrative, or relating to issuance of other approvals shall require a noticed public hearing at which affected parties will have an opportunity to review and comment on the developer's compliance with the condition(s) precedent. Notice shall be provided as in Section 204.6.E.7.

7. Notices

- a. Notice of the submission of a Conditional Use Permit Application shall be given by the Board to the owner, applicant, abutters, holders of conservation, preservation and agricultural preservation restrictions, and every licensed professional whose seal appears on the plans by certified mail at least ten (10) days prior to the submission, and to the general public at the same time by posting in at least 2 public places in the town. The notice shall give the date, time and place of the Board meeting at which the Conditional Use Permit Application will be formally submitted to the Board, and shall include a general description of the proposal which is the subject of the application or of the item to be considered and shall identify the applicant and the location of the proposed subdivision.
- b. For any public hearing on a completed application, the same notices as required for notice of submission of the completed application shall be given. If the notice of public hearing has been included in the notice of submission or any prior notice, additional notice of the public hearing is not required. Additional notice shall not be required of an adjourned session of a hearing if the

date, time and place of the adjourned session was made known at the prior hearing.

8. Issuance of Decision

- a. The Planning Board shall issue a final written decision which either approves, conditionally approves, or disapproves the application. If the application is not approved, the Board shall provide the applicant with written reasons for the disapproval. Decisions regarding incomplete applications shall be made as provided in Section 204.6.E.4.
- b. The Planning Board's decision shall be placed on file in the Office of the Planning Board/Planning Department and shall be made available for public inspection within 5 business days after the vote to approve, conditionally approve or disapprove the application is made. A copy of the decision shall be made available to the applicant.
- c. The applicant shall comply with all conditions, precedent and subsequent, receive final approval, and complete all construction associated with the Conditional Use Permit within two (2) years from the date of approval. The Planning Board may grant extensions for additional years, not to exceed five (5) years from the original approval date, upon request by the Applicant in writing.

9. Inspection and Compliance

- a. In order to receive a certificate of occupancy, a "Conditional Use Permit compliance statement" must be filled out and stamped by a professional engineer or Certified Professional in Erosion and Sediment Control (CPESC) who has certified that he or she has the requisite experience and certifications to meet the design requirements, including expertise in site grading, site drainage, erosion control, hydrology, and soils or by a person specified by the board. The form must indicate that the professional has inspected the affected area(s), and that the Conditional Use Permit and plan has been complied with.
- b. In certain situations (where there is minimal structural impact, for example), the use of a professional engineer or licensed land surveyor with a certification in erosion and sediment control may not be required. The applicant may approach the Board in those situations to request a waiver to this requirement and to propose to the Board their

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alternative suggestion for who will carry out the inspection required below.

- c. In order to release the performance bond, the requirements of Section 204.6.E.9.a, above, must be met and the qualified professional must attest that the affected area(s) have been adequately, and verifiably stabilized. The applicant shall forward a copy of the "Conditional Use Permit Compliance Statement" to the Planning Board in order for the Board to release the performance bond. The Planning Board may disagree with the findings of any inspector and require that the board or their designee perform an independent inspection prior to the release of the performance bond. The Planning Board reserves the right to require a compliance hearing to confirm compliance with the Conditional Use Permit plan and application. The Planning Board also reserves the right to require an As-Built plan to be submitted.

CONDITIONAL USE PERMIT COMPLIANCE STATEMENT

I hereby certify that I \_\_\_\_\_ (PRINT NAME), a professional engineer or Certified Professional in Erosion and Sediment Control (CPESC) with more than 2 years of experience in site grading, site drainage, erosion control, hydrology and soils, have inspected the affected areas as shown on the Conditional Use Permit for

\_\_\_\_\_, (PRINT APPLICANT'S NAME)  
Tax Map/Lot # \_\_\_\_\_, located on \_\_\_\_\_ (PRINT ROAD NAME), and hereby certify that the Conditional Use Permit Plan has been complied with and that the affected areas have been adequately and verifiably stabilized.

10. Fees, Application form and Checklist

- a. A Conditional Use Permit Application shall be accompanied by the appropriate filing fee(s) as listed in the New Boston Planning Board's Rules of Procedure.
- b. All costs of notices, whether mailed or posted, shall be paid in advance by the applicant. Failure to pay costs shall constitute valid grounds for the Board to terminate further consideration and to disapprove the plat without a public hearing.
- c. The Conditional Use Permit Application Form and Checklist can be found in the New Boston Planning Board's Rules of Procedure.

11. Plan Review and Approval

- a. The Planning Board may call for an outside technical review of any Conditional Use Permit Application that is prepared under this Regulation. Such review shall be required for any Conditional Use Permit Application submitted for construction or reconstruction of a street or road. Any such technical review shall be conducted by the Town's Consulting Engineer or other qualified professional consultant, as determined to be appropriate by the Planning Board, at the expense of the applicant.
- b. The Planning Board shall indicate approval of the Conditional Use Permit Application if it complies with the requirements of this Ordinance. If disapproved, a list of the reasons for disapproval shall be stated in the Planning Board records and given to the applicant.

F. Conditional Use Permits for Non-conforming Lots

Upon application to the Planning Board, a Conditional Use Permit may be granted to permit the erection of a structure within the Wetlands and Stream Corridor Conservation District on vacant lots provided that all of the following conditions are found to exist:

1. The lot for which the Conditional Use Permit is sought is an official lot of record, as recorded in the Hillsborough County Registry of Deeds, prior to the date on which this amendment was posted and published in the Town. (December 8, 2006)
2. The use for which the Conditional Use Permit is sought cannot feasibly be carried out on a portion or portions of the lot which are outside the Wetlands and Stream Corridor Conservation District.
3. Due to the provisions of the Wetlands and Stream Corridor Conservation District, no reasonable and economically viable use of the lot can be made without the Conditional Use Permit.
4. The design and construction of the proposed use will, to the extent practical, be consistent with the purpose and intent of this Section.
5. The proposed use will not create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of groundwater, or other reason.

The Planning Board may themselves, or upon petition from the Building Inspector, Conservation Commission or abutters, hire a qualified consultant or consultants to prepare such studies as are necessary to



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determine whether the conditions set forth above have been met. The cost of such studies shall be borne by the applicant.

G. Exemption for Residential Structures

Notwithstanding other provisions of this Section, the construction of additions to one- and two-family dwellings and their associated accessory buildings, and septic systems and any legally required replacements thereof shall be permitted within the Wetlands and Stream Corridor Conservation District provided that: (1) the dwelling lawfully existed prior to March 13, 2007, (2) no part of the footprint of the addition is any closer to the protected water resource than was the existing structure, and (3) the proposed construction conforms with all other applicable ordinances and regulations of the Town of New Boston.

H. Conflicting Provisions

Should any of the provisions of this Section conflict with any other applicable provision of Federal or State law, or local Land Use Ordinance or Regulation, the provision providing the greater protection of the protected aquatic resource (pond, pool, stream, or wetland) shall apply.

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Section 204.7     Groundwater Resource Conservation District

A.    Authority and Purpose

Pursuant to the authority granted under RSA 674:21, as amended, the Town of New Boston hereby adopts the following regulations. The purpose of these regulations is, in the interest of public health, safety and general welfare, to protect, preserve and maintain existing and potential groundwater supply areas and to protect surface waters that are fed by groundwater from adverse development, land use practices or depletion. (Amended March 9, 2010.)

This is to be accomplished by regulating land uses which would contribute polluted water and pollutants to designated wells and/or aquifers identified as being needed for present and future public and private water supply. (Amended March 9, 2010.)

B.    District Defined

The Groundwater Resource Conservation District shall encompass those areas which are identified on the map entitled "Town of New Boston Aquifer Transmissivity Levels", dated June 2009, as prepared by the Southern New Hampshire Planning Commission. This map is based upon the stratified drift aquifer data available on NH GRANIT. This transmissivity data was automated from maps generated as part of a larger study of groundwater resources in the State and is based on a study conducted under a cooperative agreement between the U.S. Geological Survey, Pembroke, NH and the NH Department of Environmental Services, Water Resources Divisions. From time to time, this data may be amended or superseded by the U.S. Geological Survey and the NH Department of Environmental Services, or by the Planning Board as provided herein. (Amended March 9, 2010.)

The Groundwater Resource Conservation District shall also include all the Wellhead Protection Areas for public water supply wells as defined under Section J of this ordinance. (Amended March 9, 2010.)

The Town of New Boston Aquifer Transmissivity Levels Map is hereby adopted by reference as a zoning overlay district within which additional standards apply to the underlying zoning classification. In all cases where the standards for this district conflict with those of the underlying district, the more restrictive requirement shall apply. (Amended March 9, 2010.)

C.    Incorrectly Designated Zones

When the actual boundary of the Groundwater Resource Conservation District is disputed by any owner or abutter affected by said boundary, the Planning Board, at the owner/abutter's expense and request, may engage the services of a professional geologist or

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hydrologist to determine more accurately the precise boundary of said District. The Planning Board shall have the authority to make the final determination as to the location of a disputed boundary.

**D. Prohibited Uses**

The following uses shall not be permitted within the Groundwater Resource Conservation District:

1. The development or operation of a hazardous waste disposal facility as defined by RSA 147-A. (Added March 9, 2010.)
2. The development or operation of a solid waste landfill or the disposal of solid waste other than brush or stumps. (Brush and stump dumps require state permits.) (Amended March 9, 2010.)
3. The development or operation of a petroleum bulk plant or terminal or the subsurface storage of petroleum and refined petroleum products and chemicals. (Amended March 9, 2010.)
4. The development or operation of a wastewater or septage lagoon or the disposal of liquid or leachable wastes, except from residential, commercial or industrial systems which discharge human sanitary wastes only. (Amended March 9, 2010.)
5. Industrial uses which discharge contact type process waters on site. Non-contact cooling water discharge is permitted.
6. Outdoor unenclosed or uncovered storage of road salt or other deicing chemicals in bulk. (Amended March 9, 2010.)
7. The development or operation of a snow dump or the dumping of snow containing de-icing chemicals if the snow is brought in from outside the Groundwater Resource Conservation District. (Amended March 9, 2010.)
8. Commercial animal feedlots.
9. Excavation of sand or gravel, except where conducted in accordance with a permit issued pursuant to RSA 155-E and the Town of New Boston Earth Removal Regulations, a Conditional Use Permit issued by the Planning Board, or except when incidental to a permitted use. (Amended March 9, 2010.)
10. Disposal, processing or recycling of hazardous or toxic materials.
11. Automotive service or repair shops.
12. Junk and salvage yards, unless such facility is certified by the

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NH DES as a Green Yard under the Phase II: Compliance Assurance and Certification component of the NH DES Green Yards Program.  
(Amended March 9, 2010.)

13. Bulk storage of toxic materials for resale or distribution.

E. Permitted Uses

Any use permitted in the underlying district shall be permitted within the Groundwater Resource Conservation District, including uses allowed by Special Exception or Conditional Use, except those which are expressly prohibited in Section D of this ordinance. All Permitted Uses, Conditional Uses, and uses Permitted by Special Exception must comply with the Performance Standards of Section I of this Ordinance as well as the following additional limitations: (Amended March 9, 2010.)

1. No more than 30 percent of any lot shall be rendered impervious by building and pavement.
2. Petroleum products, chemicals, road salt, and other materials which have the potential for contaminating groundwater shall be stored within a fully enclosed structure designed to contain any spill within the structure.
3. Storm drainage facilities shall be designed so that normal infiltration to groundwater is retained. (Amended March 9, 2010.)

F. Special Exceptions

In the case of any use which may be allowed by special exception in the underlying zoning district, it must be found by the Zoning Board of Adjustment, in written findings of fact, that all of the following are true:

1. The proposed use will not have a detrimental effect on the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants;
2. The proposed use will not cause a significant reduction in the long-term volume of water contained in the aquifer, or in the storage capacity of the aquifer;
3. The proposed use will discharge no wastewater on site other than that which is permitted under the provisions of this Article; and,
4. The proposed use complies with all other applicable sections of this Article.

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The Zoning Board of Adjustment may require that the applicant for a special exception provide data or reports prepared by a professional engineer or qualified groundwater consultant to assess any potential damage to the aquifer that may result from the proposed use. The Zoning Board of Adjustment may engage such professional assistance as it requires to adequately evaluate such reports and to evaluate, in general, the proposed use in light of the above-mentioned criteria. Cost for any of the above-mentioned services shall be paid by the applicant.

Prior to rendering a decision on an application for a special exception, the Zoning Board of Adjustment shall request from the Planning Board and the Conservation Commission opinions as to whether the proposed use is consistent with the purpose of this Article.

G. Conditional Uses (Section added March 9, 2010.)

A Conditional Use Permit is required for the following uses. In granting such permit, the Planning Board must first determine that the proposed use is not a prohibited use and such use shall be in compliance with the additional limitations for Permitted Uses in Section E, including the Performance Standards of Section I of this Ordinance.

1. Construction of ponds subject to site plan review.
2. The siting or operation of Green Yards as certified by the NH DES under the Phase II: Compliance Assurance and Certification component of the NH DES Green Yards Program.
3. The siting or operation of a commercial composting facility.
4. The siting or operation of a commercial car wash. The facility must be designed and operated as a closed-loop system.
5. Any sand or gravel excavation permitted in accordance with RSA 155-E and the Town of New Boston Earth Removal Regulations, or with respect to any earth removal allowed as being incidental to any permitted use, such earth excavation or removal shall not be carried out within four (4) vertical feet of the seasonal high water table.

H. Exemptions (Section added March 9, 2010.)

The following uses and activities are exempt from the specified provisions of this Ordinance as long as they are in compliance with all applicable local, state and federal requirements.

1. Single and two-family residential development and accessory dwelling units.

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2. Activities designed for conservation of soil, water, plants and wildlife.
3. Outdoor recreation, nature study, boating, fishing and hunting and other activities directly associated with the conservation of wildlife.
4. Normal operation and maintenance of existing water bodies and dams, splash boards and other water control, supply and conservation devices.
5. Foot, bicycle, horse paths, ski and snowmobile trails and bridges.
6. Maintenance, repair of any existing structure, providing there is no increase in impervious surface above the limit established by this Ordinance.
7. Farming, gardening, nursery, forestry, harvesting and grazing provided that fertilizers, herbicides, pesticides, manure and other leachables are used appropriately at levels that will not cause groundwater contamination. Materials will be stored under shelter.

I. Performance Standards (Section added March 9, 2010.)

The following Performance Standards shall apply to all uses in the Groundwater Resource Conservation District unless Exempt under Section H of this Ordinance. The Planning Board may, at its discretion, require a performance guarantee or bond, in an amount and with surety conditions satisfactory to the Board, to be posted to ensure completion of construction of any facility required for compliance with the Performance Standards.

1. Any use requiring the storage, handling, and use of regulated substances in quantities exceeding 100 gallons or 800 pounds dry weight at any one time, are required to have in place an adequate plan to prevent, contain, and minimize releases from catastrophic events such as spills or fires which may cause large releases of regulated substances.
2. For any use that will render impervious more than 15% or more than 2,500 square feet of any lot, whichever is greater, a stormwater management plan shall be prepared which the Planning Board determines is consistent with the New Hampshire Stormwater Manual, New Hampshire Department of Environmental Services, Volumes 1 - 3, December 2008, as amended; Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire, Rockingham County Conservation

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District, August 1992; Best Management Practices for Urban Stormwater Runoff, NH Department of Environmental Services, January 1996; and, the Town of New Boston, Subdivision Regulations, Section V-V, Stormwater Management and Erosion and Sediment Control Regulations.

**J. Definitions**

For the purpose of this Article, the following terms shall have the meaning given herein:

Animal Feedlots: A commercial agricultural establishment consisting of confined feeding areas and related structures used for the raising of livestock.

Aquifer: A geologic formation composed of rock, sand or gravel that contains significant amounts of potentially recoverable water. (Amended March 9, 2010.)

Groundwater: Subsurface water that occurs beneath the water table in soils and geologic formations. (Amended March 9, 2010.)

Hazardous or Toxic Materials and Waste: Waste material which may pose a present or potential hazard to human health or the environment when improperly stored, transported or disposed of or otherwise managed. Examples of hazardous waste include: toxic (poisonous) wastes; flammable wastes (paint, varnish removers, solvents and oils); reactive wastes; and corrosive wastes (acids).

Impervious: Not readily permitting the infiltration of water. (Added March 9, 2010.)

Impervious Surface: A surface through which regulated substances cannot pass when spilled. Impervious surfaces include concrete unless unsealed cracks or holes are present. Asphalt, earthen, wooden or gravel surfaces; or other surfaces which could react with or dissolve when in contact with the substances stored on them are not considered impervious surfaces. (Added March 9, 2010.)

Junkyard: An establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk (e.g. scrap metal, used appliances), or for the maintenance or operation of an automotive recycling yard, and includes garbage dumps and sanitary landfills. The word does not include any motor vehicle dealers registered with the Director of Motor Vehicles under RSA 261:104 and controlled under RSA 236:126. (Added March 9, 2010.)

Leachable Wastes: Waste materials including solid wastes, sludge, and agricultural wastes that are capable of releasing contaminants to the surrounding environment.

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Outdoor Storage: Storage of materials where they are not protected from the elements by a roof, walls, and a floor with an impervious surface. (Added March 9, 2010.)

Public Water System: A system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year [New Hampshire Administrative Rule Env-Ws 302.02 (bg) and RSA 485:I-a,XV]. (Added March 9, 2010.)

Regulated Substance: Petroleum, petroleum products and substances listed under 40 CFR 302.4, 7-1-90 Edition, or current edition [US Code of Federal Regulations], excluding the following substances: ammonia, sodium hypochlorite, sodium hydroxide, acetic acid, sulfuric acid, potassium hydroxide, potassium permanganate and propane and other liquefied fuels which exist as gases at normal atmospheric temperature and pressure. Copies of 40 CFR 302.4, 7-1-90 Edition, or current edition, are available online at the Environmental Protection Agency (EPA) website or in the Planning Board Office. (Added March 9, 2010.)

Sanitary Protective Radius: The area around a well that must be maintained in its natural state as required by Env-Ws 378 or 379 (for community water systems) and Env-Ws 372.13 (for other public water systems). (Added March 9, 2010.)

Secondary Containment: A structure such as a berm or dike with an impervious surface which is adequate to hold at least 110 percent of the volume of the largest regulated-substances container that will be stored there. (Added March 9, 2010.)

Snow Dump: For the purposes of this Ordinance, a location where snow which is cleared from roadways and/or motor vehicle parking areas is placed for disposal. (Added March 9, 2010.)

Sludge: Residual materials produced by water and sewage treatment processes and domestic septic tanks.

Solid Wastes: Any discarded or abandoned material including refuse, putrescible material, septage, or sludge as defined by New Hampshire Solid Waste Rules He-P 1901.03. Solid waste includes solid, liquid, semi-solid, or certain gaseous waste material resulting from residential, industrial, commercial, mining, and agricultural operations and from community activities.

Stratified Drift-Aquifer: A geologic formation of predominantly well sorted sediment deposited by or in bodies of glacial melt water, including gravel, sand, silt, or clay, which contains sufficient



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saturated permeable material to yield significant quantities of water to wells. (Added March 9, 2010.)

Surface Waters: Streams, lakes, ponds, and tidal waters, including marshes, water courses, and other bodies of water, natural or artificial. (Added March 9, 2010.)

Wellhead Protection Areas: The surface and subsurface area surrounding a water well or well field supplying a community public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field. [RSA 485-C:2, Definitions.] (Added March 9, 2010.)

K. Non-conforming Uses

Any non-conforming use may continue and may be maintained, repaired and improved, unless such use is determined to be an imminent hazard to public health and safety by the Selectmen, Health Officer or Building Inspector. No non-conforming use may be expanded, changed to another non-conforming use, or renewed after it has been discontinued for a period of twelve (12) months or more.

L. Site Plan Review

All development proposals, other than single family and two family construction, shall be subject to review in accordance with the provisions of the Non-Residential Site Plan Review Regulations administered by the Planning Board.

M. Inspections (Section added March 9, 2010.)

All Permitted Uses under Section E, Conditional Uses granted under Section G and Special Exceptions granted under Section F of this Ordinance may be subject to annual inspections by the Building Inspector/Code Enforcement Officer or another agent, that agent must be approved by both the Board of Selectmen and the Planning Board.

1. Inspections may be required to verify compliance with Performance Standards, Section I, and the additional standards of Section E of this Ordinance. Such inspections shall be performed by the Building Inspector/Code Enforcement Officer at reasonable times with prior notice to the landowner.
2. All properties within the Groundwater Resource Conservation District known to the Building Inspector/Code Enforcement Officer as using or storing regulated substances in containers with a capacity of 10 gallons or more except for facilities where all regulated substances stored are exempt from this Ordinance under Section H, shall be subject to inspections under this Section.

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3. The Planning Board may require a fee for compliance inspections. The fee shall be paid by the property owner. A fee schedule shall be established by the Planning Board as provided for in RSA 41-9:a.

N. Enforcement Procedures and Penalties (Section added March 9, 2010.)

Any violation of the requirements of this Ordinance shall be subject to the enforcement procedures and penalties detailed in RSA 676.

O. Savings Clause (Section added March 9, 2010.)

If any provision of this Ordinance is found to be unenforceable, such provision shall be considered separable and shall not be construed to invalidate the remainder of the Ordinance.

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Section 204.8 Forestry and Conservation District

Objective and Characteristics

To protect large areas of undeveloped land which have been identified as having unique value for: the conservation of land and wildlife habitat; the preservation of the rural character of the Town; the maintenance of natural resources, including aquifers which provide water to private wells; the maintenance of recreational opportunities and scenic beauty; the encouragement of the continuation of large contiguous tracts of forest land in private ownership; the encouragement of forestry and timber harvesting; the development of linkages of open space corridors; or, to protect large areas of undeveloped land which are undevelopable or marginally developable because of poor road access, steep slopes, shallow depth to bedrock, or severe limitations for septic systems.

Uses

Permitted Uses

1. One Family Dwelling
2. Forestry
3. Wildlife habitat and management
4. Conservation and nature trails
5. Outdoor recreational facility

Allowed by Special Exception

1. Log concentration yard
2. Fuel wood processing yard
3. Lodging house
4. Sawmill
5. Agriculture and farming operations, other than forestry

Areas and Dimensions

<u>Minimum Lot Size</u>	<u>Frontage</u>	<u>Minimum Yard Dimensions</u>		
<u>Area</u>	<u>Width</u>	<u>Front</u>	<u>Each Side</u>	<u>Rear</u>
25 acres	*	50'	75'	75'

- \* Each lot shall accommodate a two hundred foot (200') minimum square at the front 50' setback line, to be placed at that setback parallel with the road.

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Section 204.9 Steep Slopes Conservation District (Section added 3/8/05.)

A. Authority and Purpose

By the authority granted in New Hampshire RSA 674:16-17 and RSA 674:20-21, as amended, and in the interest of public health, safety, natural resources and general welfare, the New Boston Steep Slopes Conservation District is hereby enacted to require responsible development of steeply sloping land.

The Steep Slopes Conservation District is intended to:

1. Reduce the negative environmental impacts of stormwater runoff caused by land disturbance for construction and/or other uses, and erosion and sedimentation into streams, rivers, ponds and wetlands;
2. Reduce the dangers of pollution from septic system installation and performance in steep slope areas and to prevent additional water from hillside septic systems from causing erosion;
3. Preserve vegetative cover and wildlife habitat;
4. Prevent negative impact to the Town's roads and drainage systems;
5. Prevent development that could negatively impact the Town's ability to provide emergency services; and,
6. Permit those uses of land which can be harmoniously, appropriately and safely located on steep slopes. (Amended March 14, 2006.)

B. District Boundaries

1. The Steep Slopes Conservation District includes all areas of New Boston with slopes of equal to or greater than 15% up to 25% and 25% or greater.
2. For visual reference and for use as a general guide, the Steep Slopes Conservation District is shown on the map designated as the "Town of New Boston Steep Slopes Map," dated 08/03/2004, and is hereby adopted by reference.
3. The Steep Slopes Conservation District is a zoning overlay district within which additional standards apply to the underlying zoning classification. In all cases where the standards for this district conflict with those of the underlying district, the more restrictive requirement shall apply.
4. The standard for delineation or mapping of the steep slopes conservation district shall be by either an aerial or on-ground topographical survey in intervals of not less than 5 feet contours.

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Said mapping standard to be completed by a qualified surveyor licensed to practice in the State of New Hampshire. Any necessary surveying and other expenses incurred for this purpose shall be paid by the applicant.

C. Scope of Application of Ordinance

1. This ordinance is intended to apply to the construction or development of any building lot not exempted hereby and is also intended to govern the manner in which the Planning Board approves of subdivisions and site plans.

D. Incorrectly Designated Zones

1. In the event an area is incorrectly designated as being moderately steeply sloping or very steeply sloping on the Town of New Boston Steep Slopes Map, or an area not so designated meets criteria for a steep slope designation and evidence to that effect is satisfactorily presented to the Planning Board during site plan or subdivision review, or to the Building Inspector during an application for building permit, such Board or official may determine that the restrictions contained in this section shall or shall not apply, whichever the case may be. Any necessary testing or expenses incurred to clearly delineate questionable steep slope areas shall be based on an on-ground survey at not less than 5 feet contour intervals, completed by a qualified surveyor licensed to practice in the State of New Hampshire. Any necessary surveying and other expenses incurred for this purpose shall be paid by the applicant.

E. Exemptions (Renumbered March 14, 2006.)

1. All development proposals shall be subject to RSA 676:12, as amended, however, lots of record recorded in the Hillsborough County Registry of Deeds prior to the adoption of this ordinance shall be exempt from the requirements of the Steep Slopes Conservation District, provided, however, that uses requiring Non-Residential Site Plan Review shall be subject to the requirements of said district.
2. Excavation operations shall be exempt from the requirements of the Steep Slopes Conservation District, provided, however, that said operation shall be conducted in accordance with best management practices, and shall follow all applicable town ordinances, state laws, regulations, and rules in RSA 155-E, as amended.
3. Any portion of a lot encumbered by a non-buildable conservation easement or no-build deed restriction shall be exempt from the requirements of the Steep Slopes Conservation District. (Added March 14, 2006.)

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F. Individual Stormwater Management Plan (Added March 14, 2006.)

All subdivision or development in the steep slopes conservation district will require these additional regulations to be followed:

1. All lots created following the adoption of this ordinance (DATE) shall show lines on the plan depicting at least one Suitable Building Envelope area (SBE) of at least 0.5 acres of contiguous flatland that is all at least 75 feet from all Very Poorly Drained soils and 20 feet from all side and rear lot lines. All steeply sloped areas outside the SBE would be depicted as a "Critical Area".
2. If the SBE is less than 0.5 acres, or if any disturbance is proposed or will likely be required in the "Critical Areas", then an "Individual Pre-Engineered Stormwater Management Plan" (IPESWMP) shall be submitted at the time of subdivision application to verify that the lot is viable for building on.
3. All plans with critical areas will require notes, satisfactory to the Planning Board per the Town of New Boston Subdivision Regulations, that any construction proposed in the "Critical Areas" will require a "Stormwater Management Plan" (SWMP) to be submitted prior to the issuance of a building permit. If the construction will adhere to an existing PESWMP, then the PESWMP can be upgraded to a SWMP for the building permit. See Town of New Boston Planning Board Subdivision and Non-Residential Site Plan Review regulations for specific requirements of the IPESWMP and ISWMP.
4. Newly created deeds for properties with critical areas will require notes, satisfactory to the Planning Board per the Town of New Boston Subdivision Regulations, that indicate the presence of critical areas and inform potential owners of the ISWMP requirement.

G. Site Plan Review (Renumbered March 14, 2006.)

All development proposals, other than single family and two family construction, shall be subject to review in accordance with the provisions of the Non-Residential Site Plan Review Regulation administered by the Planning Board.

H. Definitions (Renumbered March 14, 2006.)

Very Steep Slope Areas - This category of steep slope includes land areas with slopes of 25% or greater covering 1,000 square feet or more. (Amended March 14, 2006.)

Moderately Steep Slope Areas - This category of steep slope includes land areas with slopes of equal to or greater than 15% up to 25% covering 1,000 square feet or more. (Amended March 14, 2006.)

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Flatland - All areas outside of the Steep Slopes Conservation District.

Suitable Building Envelope - An area of at least 0.5 acres of contiguous land that is all at least 75 feet from very poorly drained soils, at least 20 feet from all side and rear lot lines and does not include any slopes in excess of 15%. All suitable building areas on a lot should be delineated and shown as one or more suitable building envelopes. (Added March 14, 2006.)

Development - Any construction or land alteration or grading activities other than for gravel operations, agricultural and forestry practices. (Added March 14, 2006.)

Disturbed Area: An area where the natural vegetation has been removed exposing the underlying soil. (Added March 14, 2006.)

Critical Area: Disturbed areas of any size located within 75 feet of a stream, bog, water body, very poorly drained soils or 50 feet of poorly drained soils; disturbed areas exceeding 2,000 square feet in highly erodible soils; disturbed areas exceeding 20,000 square feet in any soil type; creation of impermeable surfaces exceeding 10,000 square feet; disturbed areas within 20 feet of a side or rear lot line or, disturbed areas containing slopes in excess of 15 percent covering 1,000 square feet or more. (Added March 14, 2006.)

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Section 205        Permitted Uses

Permitted uses are those uses that are allowed, providing the standards established by this ordinance are met.

Section 206        Special Exceptions

Section 206.1      General Provisions

Certain principal uses of land and buildings may be allowed as a special exception only by approval of the Board of Adjustment, if the standards contained in this Ordinance are complied with. Before allowing such special exception, the Board of Adjustment shall first determine that the proposed use will conform to such requirements including:

- A. Required Plan. A plan for the proposed development of a site for a special exception shall be submitted with the application and such plan shall show the location of all buildings, parking areas, traffic access and circulation drives, open spaces, landscaping, and any other pertinent information that the Board may deem necessary to determine if the proposed use meets the requirements of this Ordinance.
- B. Expiration. A permit for a special exception shall be deemed to authorize only one particular use category and shall expire if the use shall cease for more than one (1) year for any reason, or if the use is not initiated within one (1) year, and a new application shall be submitted for continuance for such special exception.
- C. Existing Violations. No permit shall be issued for a special exception for a property where there is an existing violation of this Ordinance unless the granting of the special exception will correct the violation.
- D. Criteria for a Special Exception. In order for a special exception to be granted the proposed use shall not adversely affect:
  - (1) The capacity of existing or planned community facilities;
  - (2) The character of the area affected;
  - (3) Traffic on roads and highways in the immediate vicinity.

Section 206.2      Standards Applicable to Special Exceptions

If deemed necessary to protect the best interests of the surrounding property, the neighborhood, or the Town as a whole, the Board of



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Adjustment shall impose standards in granting a special exception. These additional standards may include the following:

- A. Increasing the required lot size or yard dimensions in order to protect the adjacent properties.
- B. Limiting the coverage or height of buildings because of obstruction to view and reduction of light and air to adjacent properties.
- C. Controlling the location and number of vehicular access points to the property.
- D. Increasing the street width adjacent to the property.
- E. Increasing the number of on-site off-street parking or loading spaces required.
- F. Limiting the number, location and size of signs on-site.
- G. Requiring suitable on-site landscaping and screening where necessary to reduce noise and glare and to maintain the property in character and keeping with the surrounding area.
- H. Specifying a time limit for initiation of construction, alteration, or enlargement of a structure to house an exception.
- I. Providing for specific layout of facilities on the property such as location of the building, parking areas, or access to the building so as to minimize effect on adjoining property.
- J. Requiring that any future enlargement, or alteration of use be accomplished only with the approval of the Board of Adjustment.
- K. Specifying standards for operation of this special exception so that it will be no more objectionable to the neighborhood by reasons of noise, odors, vibrations, flashing lights or hours of operation than will be the operation of a permitted use at that site.
- L. Requiring such additional, reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance and to protect the best interests of the surrounding property and the neighborhood.

Section 207      Lots

In any district, notwithstanding any limitations imposed by other provisions of this Ordinance, a single lot legally in existence on the effective date of adoption of this Ordinance may be built upon even

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though such lot fails to meet the minimum requirements for area or width, or both, that are generally applicable in the district, providing all state, town or other applicable permits are obtained that are not related to lot size.

Section 208      Dimensional Requirements

The following dimensional standards shall apply:

Section 208.1      Minimum Lot Width

- A. The minimum lot width shall be as specified in Section 204.

Section 208.2      Front Yard Regulations and Exceptions

- A. Any lot line contiguous to a street or road, including Class VI roads, is deemed to be a front lot line; except that, where a lot is a corner lot or otherwise has multiple lot lines contiguous to a street, the lot shall be required only to have one front yard for the purposes of these regulations. The front yard shall be adjacent to the lot line fronting the street from which driveway access is provided. In the event of a question or disagreement with regard to which lot line should be considered the front lot line the Building Inspector/Code Enforcement Official shall make the final determination. (Amended 3/13/12.)
- B. No building shall be built nearer to any street line than the minimum front yard specified in Section 204 with the following exception: where the average front building line setback of the existing buildings, provided there are at least two, on the same side of the street in the same block, but not more than 300 feet distant along the street from the subject premises, is less than the depth specified in Section 204, such average setback shall be the required front yard depth, except as provided for in Section 308.
- C. No accessory building may occupy any part of a required front yard.

Section 208.3      Side Yard Regulations and Exceptions

- A. No building shall be built nearer to a side lot line than the minimum dimension specified in Section 204 except as provided in Section 308.

Section 208.4      Rear Yard Regulations and Exceptions

- A. No building shall be built nearer to a rear lot line than the minimum rear yard depth specified in Section 204 except as provided in Section 308.

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Section 208.5     Height Regulations and Exceptions

- A. The height of any building shall be measured from the average finished grade along the building front, and shall not exceed a height of 35 feet except as provided for in this Section.
- B. Flagpoles located on a roof or in any required yard may extend above the height limit specified.
- C. Chimneys, spires, silos, towers, lightning rods, or like superstructure not used for human occupancy may extend above the height limit specified.
- D. Radio or TV antennae for private, non-commercial reception may be located on the roof or in the side or rear yard, but not in the required front yard.

Section 209     Application of District Regulations

Any legal non-conforming use existing on the effective date of this Ordinance, or the effective date of the adoption of any amendments to the zoning districts as listed in Section 204 of this Ordinance, may be continued indefinitely to the extent set forth in this Ordinance. Otherwise, no building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved or altered unless in conformity with the regulations herein specified for the district in which it is located. (Amended March 13, 2001.)

**ARTICLE III        GENERAL PROVISIONS**

The following provisions shall apply to all districts except where listed:

Section 301        Front Yard Setback

Notwithstanding provisions for front yards elsewhere in these regulations, on streets with less than 50 foot right-of-way, the front yard requirement shall be measured from the center line of the existing right-of-way and 25 feet shall be added to the front yard requirement. However, if the right-of-way is indeterminable, as in the case of a "prescriptive road", then the front yard requirement shall be measured from the center line of the existing traveled way and 25 feet shall be added to the front yard requirement.

Section 302        Lots in Two Zoning Districts

Where a district boundary line divides a lot of record at the time such district boundary line is established, the regulations for either district of such lot shall extend not more than 30 feet (100 feet in the Residential and Agricultural district) into the other district, provided the lot has frontage on a street in the district for which the use is being granted.

Section 303        Principal Buildings and Uses Including Dwellings on Lots

There shall be only one principal building on a lot, with the exception of commercial lots which shall be allowed to have more than one principal building, providing that the buildings comply with all other relevant sections of the Zoning Ordinance and do not exceed the maximum building coverage of 70% of the lot size. The principal use or uses of each lot shall be allowed as provided for in Section 204.  
(Amended March 11, 2003.)

Section 304        Building Coverage, Open Porches, Carports, and Garages

In determining the percentage of building coverage of a lot, porches or carports open at the sides but roofed, and all principal and accessory buildings shall be included, and shall not exceed 30% of the lot size. Building coverage on Commercial and Industrial lots shall not exceed 70% of the lot size.

Section 305        Reduction of Lot Area

No lot shall be so reduced in area that the area, yards, lot width, frontage, coverage or other requirements of this Ordinance shall be less than herein prescribed for each district. The provisions of this section shall not apply when part of a lot is taken for a public purpose.

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Section 306      Required Area or Yards

Space required under these regulations to satisfy area, yard, or other open space requirements in relation to one building shall not be counted as part of a required open space for any other building.

Section 307      ~~Yards on Corner Lots~~

Section deleted 3/13/12.

Section 308      Projections in Yards

Every part of a required yard shall be open from finished ground level to the sky, unobstructed, except for the ordinary projections of sills, cornices, pilasters, chimneys, and eaves, provided that no such projections may extend more than two feet into any required yard. Any free-standing handicapped access is exempt from this section.

Section 309      Location of Driveways

All driveways are to be located at least 75 feet from a street line intersection for all uses except one and two family dwellings. This measurement shall be taken along a street line. Driveway permits shall be obtained from the Road Agent and/or Planning Board for town roads, and from the N.H. Department of Transportation for state roads.  
(Amended March 9, 2010.)

Section 309.1

Any lot's frontage shall be capable of having a driveway installed thereon. (Section added March 9, 2004.)

Section 310      Temporary Uses and Structures

A building permit shall be required for any temporary structure or temporary use that would otherwise require a building permit if such structure or use were permanent. (Amended March 10, 2009.)

Section 311      Open Excavation

Section 311.1

Within six months after work in an excavation for a building has begun, the excavation thus remaining shall be covered such as with building construction or filled to normal grade by the owner.

Section 311.2

For safety purposes, abandoned excavations with slopes exceeding one horizontal to two vertical feet shall be protected by a fence at least four feet in height. This shall be done at the owner's expense.

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However, if the owner does not establish the protective barrier within a reasonable period of time, and after notification by the Town to do so, the Town may enter upon the property to erect the barrier and will place a tax lien on the property for the cost of that action.

Section 312        Obstruction of Vision

On a corner lot regardless of the district, within the triangular area formed by the intersection of two street property lines and a third line joining them at points twenty-five feet away from their intersection, there shall be no obstruction to vision between the heights of three feet and ten feet above the surface of each street.

Section 313        Off-Street Loading

Off-street loading facilities shall be provided for all institutional, commercial and industrial uses. These facilities shall be located so that delivery vehicles are parked outside of the street right-of-way.

Section 314        Off-Street Parking        (Section Amended March 8, 2011.)

Off-street parking shall be provided on the same lot as the use and/or building it is to serve in accordance with the standards of the Non-Residential Site Plan Review Regulations of the Town of New Boston whenever any new use and/or building is established or any existing use and/or building is enlarged or expanded. All parking areas shall be prohibited within the entire required minimum front yard area and within the first 50% of the required minimum side and rear yard areas for any district, with the exception of one or two-family dwellings that do not have non-residential uses occurring therein.

Each residential use shall have a minimum of two parking spaces per dwelling unit.

Except as otherwise provided within this Ordinance, the Planning Board is authorized, through the Non-Residential Site Plan Review Regulations of the Town of New Boston, to adopt and administer regulations regarding parking standards for all uses of land.

Section 315        Removal of Earth Products

The removal of earth products shall be governed by the provisions of the Ordinance to Regulate Removal of Earth Products which is administered by the Board of Selectmen.

Section 316        Screened Service Area Requirement

In any district all areas designated, used or intended to be used as service areas for any building or land use shall be screened from view

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by a wall, a solid fence or a fence and evergreens to a height of at least five feet above grade level on each side adjacent to a residential district or use.

Section 317        Exterior Lighting

Exterior lighting in conjunction with commercial, industrial, institutional, public and semi-public uses and residential accessory uses such as swimming pools and tennis courts shall be installed and operated in such a manner that adjacent residential uses shall be protected from direct glare and intensity of the lighting.

Section 318        Signs        (Section Amended March 8, 2011.)

Section 318.1     Purpose

The Town of New Boston recognizes that signs must serve many purposes: they promote safety by providing directional information; they allow business owners to advertise their products or services; they publicize community events; they identify locations; they may be temporary, seasonal or permanent. Careless design and siting of signs can create confusion and distraction for drivers and pedestrians and produce visual clutter that detracts from the appearance of the community.

This ordinance is intended to provide uniform regulations for the installation and use of signs in the Town of New Boston, while: protecting the health, safety and welfare of the public; providing adequate business identification and advertising; and, maintaining and enhancing the appearance, aesthetics and traditional character of New Boston to preserve and maintain a rural quality of life.

Section 318.2     Definitions

Normal grade: Normal grade shall be used as reference for sign height. Normal grade shall mean the grade prior to construction or the established grade after construction exclusive of filling, mounding or excavation solely for the purpose of locating the sign.

Permanent sign: A sign displayed permanently for those purposes listed in Section 318.1 above.

Seasonal sign: A sign displayed only during the typical selling season of the item or service provided.

Sign: Any device having a display surface on one or both sides designed to inform or attract the attention of persons not on the premises on which the sign is located.

The following shall not be included in the application of the regulation herein:

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- A. Signs not exceeding one square foot in area and bearing only property numbers, post box numbers, names of occupants of premises, or other identification of premises.
- B. Flags and insignia of any government except when displayed in connection with commercial promotion.
- C. Legal notices, identification, informational or directional signs erected as required by governmental bodies.
- D. Signs directing and guiding traffic and parking on private property, but bearing no advertising, warning signs such as "No Hunting", and "No Trespassing".
- E. Historic reference signs not exceeding six square feet indicating only the date and name of the building.

Temporary sign: A sign that is used for a specific circumstance, situation or event intended or expected to take place or be completed within a short or definite period of time and which will be up for not more than thirty (30) days of fulfilling its function.

Section 318.3     General Requirements for Signs

A.     Permit Required

A permit shall be required for all signs except those listed in Section 318.6, Regulated Signs not Requiring a Permit.

B.     Permit Procedure

- 1. An application form, provided by the Building Department, and completed and signed by the owner and/or applicant, shall be submitted to the Building Department, along with the following information and any such other information pertaining to the proposed sign(s) as the Building Inspector/ Code Enforcement Officer may reasonably require:
  - a. the fee as specified by the Building Department in its published list of permit fees.
  - b. a plan/sketch of the proposed sign(s) and building, as applicable, drawn to scale, that includes:
    - i) the total square footage of the proposed sign(s);
    - ii) the proposed support structure of the proposed sign(s);
    - iii) the height, setback and location on the property of the proposed sign(s);
    - iv) the relationship of the proposed sign(s) to other signs on the property, if any;
    - v) photographs of any existing signs;



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- vi) the proposed materials of the sign(s);
  - vii) any other design information, including, but not limited to, proposed illumination.
2. Approval. The Building Inspector/Code Enforcement Officer shall notify the owner/applicant, in writing, within 30 (thirty) working days after the receipt of all required information of the approval or disapproval of the application. The sign authorized under a sign permit must be erected within 12 (twelve) months from the date of approval or the permit shall be null and void, unless the permit is renewed. The owner/applicant shall notify the Building Inspector/Code Enforcement Officer once the sign is installed for an inspection to verify conformity to the application.

C. Permanent Signs

All permanent signs shall be constructed of durable materials and shall be maintained in good condition and repair at all times.

D. Prohibited Signs

The following signs are prohibited:

Internally illuminated signs;

Signs which are animated, flashing, or with intermittent illumination;

Signs with more than two (2) faces;

Roof signs; and,

Signs that are attached to or are an intrinsic part of an awning.

E. Externally Illuminated Signs

Externally illuminated signs are permitted in all districts.

Externally illuminated signs shall be shielded in such a way as to produce no glare, undue distraction, confusion or hazard to the surrounding area or to vehicular traffic. Illumination shall be focused upon the sign itself.

F. Sign Calculations

The area of a sign shall be determined by the shape of the surface upon which lettering, numbers, designs, pictures and/or borders are applied or displayed. The mathematical formula for area will be used that represents the closest geometrical shape of the sign surface.

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Exception: Street/address numbers may be displayed and shall not be included in the calculation of sign area, when displayed outside the primary sign area.

G. Building Code Compliance

Structural aspects of signs shall comply with the adopted International Building Code.

Electrical connections, wiring and related equipment shall comply with the adopted National Electrical Code.

The Building Inspector may require review by a design professional of any permanent sign for structural stability.

H. Real Estate Development Signs

Real Estate Development Signs may be placed on a lot to advertise building lots or real estate units for sale or lease. The sign may be no larger than 12 square feet per face, shall be constructed of durable materials and shall be maintained in good condition and repair at all times. Signs are to meet the property line setbacks and height restrictions for the zoning district within which the development is located. The sign shall be removed within 30 days of meeting its purpose.

I. Special Events

Special Events signs are those intended to advertise an event that is not a normally scheduled function of the business or other location at which the event will take place. This may include, but not be limited to, open houses, pig roasts, tent sales, and so on.

Understanding the need for attracting attention to the event, there is no limit on the size of such a sign. However, it is the intent of this section that the sign size be reasonable and the Building Inspector/Code Enforcement Official shall make the final determination as to the size allowed. The sign shall not be displayed for more than 30 days.

Special Events for bona fide non profit organizations are discussed in Section 318.6.

J. Maintenance

Any sign which becomes in disrepair shall be removed upon order of the Building Inspector/Code Enforcement Official if not repaired after 30 days notice.

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K. Property of Others

No sign shall be placed upon private property of others, or property of the Town of New Boston or State of NH or within State or Town rights-of-way without written permission. (See Section 318.7, for further details regarding signs on Town owned property.)

L. Preexisting/Permitted Signs

Any legally established and permitted sign, as of the date of adoption of this ordinance (March 8, 2011), may remain in use until such time the sign is moved or altered. For purposes of this section, altered shall mean a change to any part of the sign regulated by this ordinance, including, but not limited to, size, height and location.

A sign permit runs with the land and is not specific to the landowner.

Section 318.4 Signs in Residential Districts

- A. In any residential district, a sign is permitted up to six square feet per face which announces the name, address, phone number and/or website, or professional or home business of the occupant of the premises on which said sign is located. One off-site sign is allowed with the written permission from the landowner and the Board of Selectmen.
- B. Signs shall not be greater than 8 feet high measured from the base of the sign at normal grade to the top of the highest attached component of the sign.
- C. The closest portion of the sign to any side and rear property line shall be no closer than 15 feet. The closest portion of a sign may be placed no closer to the road than the Town's right-of-way. In addition to the specified setback, signs shall also meet the State's setback requirements on State roads.
- D. No sign shall obstruct visibility of other signs, driveways or intersections.

Section 318.5 Signs in the Commercial and Industrial Districts

In any commercial or industrial district, a business sign shall be permitted in connection with any legal business or industry located on the same premises and meeting the following requirements:

- A. Each lot shall have a maximum of 100 square feet of signage; all visible sign faces included.

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1. One free standing sign shall be permitted to be a maximum of 70 square feet. The 70 square feet includes both faces.
  2. A maximum of 30 square feet may be used for all wall signs and/or portable "A" frame signs.
  3. Lots with three or more legally established businesses thereon may utilize an additional 30 square feet for wall signs.
  4. Buildings on corner lots may have wall signs on both walls facing the street, however, the size of the wall signs shall remain within the allowable maximum square footage for signage for the lot.
- B. Signs shall not be greater than 15 feet high measured from the base of the sign at normal grade to the top of the highest attached component of the sign.
- C. Setbacks from property lines will be 15 feet from side and rear. The front setback will be determined with regards to safety, road maintenance and other applicable easements by the Building Inspector/Code Enforcement Official. In addition to the specified setbacks, signs shall also meet the State's setback requirements on State roads.
- D. Signs shall not project over public rights-of-way or property lines except that in commercial districts signs may project over the sidewalks up to a vertical line from a point one foot from the curb providing the signs are at least 10 feet above the sidewalk.
- E. Interior Window Signs
- Internally illuminated signs displayed from the interior of a window are prohibited.
- Exception: An "OPEN" sign not greater than 425 square inches may be displayed from the interior of a window.
- F. Manual Changeable Readerboard Signs
- Any manual changeable readerboard sign area shall be included in the calculation of the total square footage of allowable sign area for the lot.
- "A" Frame signs may be displayed during business hours only.
- G. No sign shall obstruct visibility of other signs, driveways or intersections.

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Section 318.6     Regulated Signs not Requiring a Permit

A.     Bulletin Boards

A bulletin board not exceeding 24 square feet per face is allowed in connection with any church, school, or similar public structure.

B.     Political Signs

Political signs shall be allowed in accordance with state legislation, RSA 664:17.

C.     Temporary Signs

A temporary agricultural products or construction sign is allowed that shall not exceed 12 square feet per face. Such a sign shall be removed within 30 days of fulfilling its function.

D.     Real Estate Signs

Real estate signs are permitted on the property being sold, leased or developed. Such sign shall be removed within 30 days of fulfilling its function and shall not exceed 12 square feet per face. (This does not apply to real estate development related signs as described in Section 318.3,H.)

E.     Special Event Signs for Non-Profit Organizations

Signs for special events such as fund raising events for bona fide non-profit organizations (Example: IRS Code 501(c)(3)) shall be displayed for no more than 30 days. Off-site signs are allowed with the written permission from the landowner and the Board of Selectmen.

Understanding the need for attracting attention to the event, there is no limit on the size of such a sign. However, it is the intent of this section that the sign size be reasonable and the Building Inspector/Code Enforcement Official shall make the final determination as to the size allowed.

F.     Seasonal Signs

Seasonal signs are those that are displayed for sales or functions that are limited by a season of the year such as the sale of agricultural products. Such signs may be displayed for a maximum of 90 days and shall not exceed 12 square feet per face.

Section 318.7     Signs on Town Owned Property

The Board of Selectmen regulates signs on Town of New Boston owned property and has adopted an ordinance for that purpose, "Temporary Signs on Town Owned Property", Approved July 11, 2005, and as amended.

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Section 319        Home Business and Expanded Home Business

Any home business shall be permitted as an accessory use if it complies with the requirements of this section, as determined by the Planning Board.

An expanded home business shall also be permitted under the same terms as noted above, providing that the nature of the expanded home business is as defined in Article VI of this Ordinance.

Section 319.1

The home business shall be carried on by members of the family residing on-site. Two on-premises employees who do not reside on the site are permitted.

The expanded home business shall also be carried on by members of the family, however, up to six (6) non-related, on-premises employees are permitted.

Section 319.2

The home business or expanded home business shall be carried on within the principal or accessory structures.

Section 319.3

Exterior storage of materials or variation from the residential character of the principal or accessory structure shall not be permitted.

Section 319.4

The home business or expanded home business shall not have an adverse effect on the environment or the surrounding properties in excess of that which exceeds normal residential use in the neighborhood of the proposed business, as a result of such things as, but not limited to, noise, vibration, odors, heat, glare, smoke, dust, lights, soil, water or air pollution, or electrical or electronic interference of any kind beyond the property.

Section 319.5

Traffic shall not be generated by such activity in greater volumes than would normally be expected in the neighborhood.

Section 319.6

Parking shall be provided off-street and in accordance with Section 314, Off-Street Parking.

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Section 319.7

All employee parking areas required for an expanded home business must be screened from view from abutting properties and roadways.

Section 319.8

No building may be remodeled or expanded to accommodate a home business, or expanded home business, without a Building Permit and a Certificate of Occupancy. The business cannot occupy more than 40% of the total living space of the dwelling.

Section 319.9

Non-Residential Site Plan Review will be required.

Section 320      Landscaping Requirements

Section 320.1

Landscaping where required under these regulations to be installed and maintained in front, side, and rear yards shall take the form of shade trees, deciduous shrubs, evergreens, well-kept grassed areas, and ground cover.

Section 320.2

One shade tree at least ten feet in height and at least three inches in caliber, measured at a point six inches above finished grade level, shall be planted no nearer than five feet to any lot line for each three hundred square feet of required landscaped area; and one deciduous shrub or evergreen shall be planted for each two hundred square feet of required landscaped area.

Section 320.3

All such landscaping shall be maintained in a healthy, growing condition.

Section 320.4

Following are the minimum landscaping requirements:

- A. Where any land use in a non-residential district abuts land in any residential district, a strip of land at least 25 feet in width shall be maintained as a landscape area in the front yard, side yards and rear yard which adjoin these other districts.
- B. Where any non-residential land use in a residential district abuts any land use in a residential district, a strip of land at least

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15 feet in width shall be maintained as a landscape and utility area in the front yard, side yards and rear yard which adjoin these uses.

- C. In a commercial or industrial district, a strip of land at least 15 feet in width shall be maintained as a landscape and utility area in the front, side and rear yards.

Section 321      Legal Non-Conforming Residential Uses in Commercial and Industrial Districts

When a residential use has been legally established on a property prior to the change to a Commercial or Industrial District, the then legal non-conforming use shall be allowed to continue under the provisions of Article V with the following noted exception. Such residential use and area shall be restricted to that which was present at the time of the re-zoning.



ARTICLE IV SPECIAL PROVISIONS

Section 401 Open Space Development Standards (District amended March 13, 2007.)

Section 401.1 Statement of Purpose

The purpose of Open Space Development is to:

1. encourage housing consistent with the small town, rural character of New Boston while offering a range of residential living opportunities as expressed by the Housing Goal of the Town's Master Plan;
2. implement Smart Growth principles that encourage traditional compact settlement patterns to efficiently use land, resources and infrastructure as stated by the Smart Growth Goal of the Town's Master Plan;
3. permit greater flexibility in design and to discourage development sprawl;
4. facilitate the economical and efficient provision of public services;
5. provide a more efficient use of land in harmony with its natural characteristics;
6. encourage flexible lot sizes and road design that will contribute to and enhance a rural atmosphere and maintain minimal safety design standards;
7. preserve more usable open space, agricultural land, tree cover, recreation areas, or scenic vistas; and,
8. to expand the opportunity for the development of a diversity of housing types, including, but not limited to, affordable housing and other subdivision options.

Section 401.2 Definitions

The following definitions shall apply specifically to this Section of the Zoning Ordinance:

- A. *Affordable Housing* - Housing meeting the purchase price limits of the Single Family Mortgage Program of the New Hampshire Housing Finance Agency and targeted to eligible households.
- B. *Buffer* - An area of land used to separate visibly one use from another or which acts as a separation between two land uses of different intensity.
- C. *Common Facilities* - Any and all facilities, such as playgrounds, wells, septic systems, gardens, etc. within an Open Space Development held in common ownership by the residents of the development.
- D. *Conventional Frontage and Other Dimensional Controls* - The prevailing zoning requirements as specified in Section 204.4 of this Ordinance.
- E. *Gross Area* - The total area of the tract, parcel, site, piece of land, or property which is the subject of an Open Space Development application.

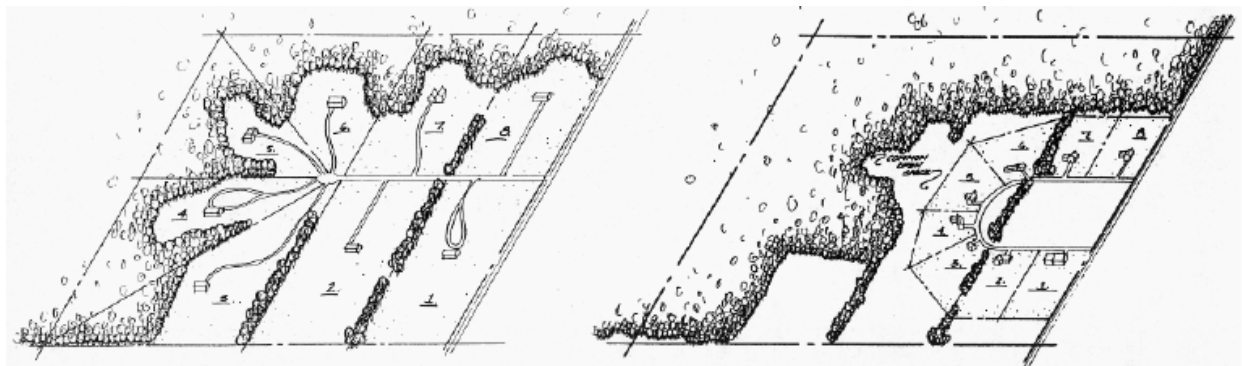
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- F. *Home Occupation* - An occupation conducted entirely within the dwelling or accessory building which is clearly incidental and secondary to the use of the principal structure as a dwelling unit and does not change the residential character thereof. A Home Occupation shall be differentiated from a Home Business or an Expanded Home Business as defined by other sections in this ordinance. A Home Occupation shall be carried out only by the family which resides on the premises and up to one non-family member. The activity shall not involve customer sales on the property and shall be clearly incidental and subordinate to the use of the premises for dwelling purposes and shall not alter the general character of the neighborhood or reduce the value of any surrounding property. The activity shall result in no external evidence of the home occupation, and shall not have an adverse effect on the environment or the surrounding properties as a result of noise, odors, smoke, dust, light, soil, water or air pollution or electrical or electronic interference of any kind beyond the property wherever or whenever such might occur. In addition, there shall be no increase in traffic or demand for additional parking. All parking must take place on-site. On-street parking is prohibited. Any activity that does not meet all of the above standards shall not be considered a Home Occupation. Approval of a Home Occupation must be obtained from the Planning Board through the Non-Residential Site Plan Review process.
- G. *Homeowners Association* - A private, non-profit association, corporation, or other non-profit legal entity which is organized by the developer of an Open Space Development in which individual owners share common interests in open space and/or facilities and are in charge of preserving, managing and maintaining the common property, and enforcing certain covenants and restrictions. Membership in said association shall be mandatory for all property owners and made a required covenant in any deed issued or passed.
- H. *Low Impact Development* - is an innovative stormwater management approach with a basic principle that is modeled after nature: manage rainfall at the source using uniformly distributed decentralized micro-scale controls. The goal of low impact development is to mimic a site's predevelopment hydrology by using management and design techniques that infiltrate, filter, store, evaporate, and detain runoff close to its source. Some of these techniques include the use of landscaping and open space, bioretention facilities, dry wells, filter/buffer strips and other landscape areas, grassed swales, bioretention swales, wet swales, rain barrels, cisterns, infiltration trenches, etc. (Source: Low Impact Development Center, Beltsville, MD)
- I. *Open Space* - Land within or related to an Open Space Development, not individually owned, which is designed and intended for the common use or enjoyment of the residents of the development, or the public, which may contain such accessory structures and improvements as are necessary and appropriate for recreational purposes. A condition of Open Space Development approval shall be that open

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space may not be further subdivided. In addition, not less than 40% of the open space shall be developable land and a minimum of 60% of all the open space within the development shall be contiguous throughout the development.

- J. *Open Space Development* - A form of residential subdivision that permits housing units to be grouped on sites or lots with dimensions, frontages and setbacks reduced from conventional sizes, provided the density of the tract as a whole shall not be greater than the density allowed by the zoning district under existing regulations and the remaining land is devoted to open space. The following figure demonstrates the difference between a conventional subdivision and an open space subdivision.



Conventional Development

Open Space Development

- K. *Tract* - An area, parcel, site, piece of land, or property which is the subject of a development proposal and application.

**Section 401.3     Review Criteria**

An Open Space Development proposal is subject to approval by the Planning Board. The Planning Board shall give particular consideration to the following minimum review criteria as addressed by the applicant in a narrative report to be submitted as part of the application:

- A. That the proposed development will be consistent with the general purpose, goals, objectives, and standards of the Town of New Boston Master Plan, Zoning Ordinance, Subdivision Regulations and Non-Residential Site Plan Review Regulations;
- B. That the proposed development complies with all applicable provisions of the Zoning Ordinance, Subdivision Regulations and Non-Residential Site Plan Review Regulations unless expressly superseded by this Ordinance;
- C. That the individual lots, buildings, streets and parking areas shall be designed and situated to minimize alteration of the natural site features;
- D. The suitability of all open space intended for recreation use or other specified uses shall be determined by the size, shape, topography and location for the particular purpose proposed, and shall be accessible to all residents of the Open Space Development, and easily accessible by foot;

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- E. Open space areas shall include irreplaceable natural features located in the tract (such as, but not limited to, stream beds, significant stands of trees, individual trees of significant size, rock outcroppings, and marshes);
- F. The proposed buildings and lots will not have an undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, utility facilities and other areas related to public health, safety and general welfare; and,
- G. Diversity and originality in lot layout and individual building design shall be encouraged to achieve the best possible relationship between development and land.

**Section 401.4     General Requirements**

- A. *Location* - Open Space Development shall be permitted in the R-A Residential-Agricultural District and the R-1 Residential-One District.
- B. *Permitted Uses* - An Open Space Development shall only include, single and two-family dwellings, accessory structures, incidental recreational uses, and home occupations as defined in this ordinance.
- C. *Permitted Density* - The total number of dwelling units permitted in an open space development shall be determined by dividing the total acreage being submitted for the proposed development, excluding the total acreage of wetlands, poorly drained soils and water bodies found on the property by the minimum lot size permitted in the underlying district. The Planning Board may grant an Innovative Open Space Enhancement as provided for under Section 401.5 of this Ordinance to increase the permitted density and open space within a proposed open space development.
- D. *Lot Size* - The minimum lot area per dwelling unit shall not be less than one (1) acre, except as provided for under the Innovative Open Space Enhancements in Section 401.5 of this Ordinance
- E. *Buffer Area* - A buffer area having a minimum depth of one hundred (100) feet shall be provided between any proposed structure within an Open Space Development and the perimeter of the tract. This buffer area shall not be part of the required open space of the development. Whenever possible the natural vegetation shall be retained, or if required, vegetation shall be planted of sufficient size to shield the development from abutting properties. No dwelling, accessory structure, collector or service roads or parking areas shall be permitted within the designated buffer area. However, primary roads are permitted to cross the buffer.
- F. *Requirements Applicable to the External Boundaries of the Development:*
  - Frontage* - The minimum Open Space Development frontage on a state or town-maintained road shall be one hundred and fifty (150) feet.
  - Yard Requirements* - Yards abutting the boundaries of the entire Open Space Development site shall not be less than the minimum requirements for the zoning district.

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G. *Requirements Applicable to Internal Design Features:*

*Frontage* - The road frontage for individual building lots within Open Space Developments shall be as shown in the table below.

*Yard Requirements* - The following standards shall govern building setback and height:

<u>Street Frontage*</u>	<u>Front Yard**</u>	<u>Side &amp; Rear Yards</u>	<u>Maximum Building Height</u>	
			<u>Feet</u>	<u>Stories</u>
50'	30'	20'	35'	2.5

\* The minimum frontage requirements may be further reduced by the Planning Board to allow for the use of wedge or irregularly shaped lots.

\*\* The average depth of all front yards within an Open Space Development shall not be less than 30 feet; however, no front yard of any lot shall be less than 24 feet.

*Maximum Building Setback from Street* - No residential dwelling or structure shall be setback further than 400 feet from the street.

*Back Lots* - Back lots as defined in the Town's Zoning Ordinance shall not be permitted in an Open Space Development.

H. *Open Space* - A minimum of 40% of the gross area of the Open Space Development shall be designated as "open space" as defined herein. The area, configuration, and location of designated open space shall be subject to approval by the Planning Board. The land so set aside shall be provided in such a manner that it is usable for recreation or other activities, is contiguous and is reasonably accessible to all residents of the Open Space Development, or to the public where land or recreational rights have been deeded to the municipality. However, because of possible noise generation from an active recreation area, these areas shall be sited with sensitivity to surrounding development. All open space shall be part of a unified open space system which will serve to unify the development visually and functionally.

The Planning Board may permit minor deviations from these open space standards when it can be determined that: 1) the objectives underlying these standards can be met without strict adherence to them; and/or, 2) because of peculiarities in the tract of land or the facilities proposed, it would be unreasonable to require strict adherence to these standards.

I. *Roads* - All roads shall be designed and constructed in accordance with the road specifications found in the Subdivision Regulations, as amended, except that the Planning Board may approve reductions in the required right-of-way width in consultation with the town road agent, police and fire departments. Pavement width of service roads which provide access within the development and to clustered dwelling units may be modified by the Planning Board in consultation with the town road agent, police and fire departments.

J. *Parking* - A minimum of two (2) off-street parking spaces shall be provided for each dwelling unit, which may include garages.

Section 401.5 Innovative Open Space Enhancements

A. *Innovative Open Space Enhancements* - The following innovative open space enhancements shall be considered and awarded by the Planning Board after the proposed open space development has met the requirements of Section 401.1 through Section 401.4 of this Ordinance. No more than 4 of the following 8 density enhancements may be awarded to an open space development proposal at any one time. The maximum total density enhancements awarded any open space development proposal shall not exceed 20%.

1) Density Enhancements.

- a. Open Space Reward. A 5% enhancement in permitted density may be awarded by the Planning Board for the provision of 50% or more open space.
- b. Open Space Linkage Reward. A 5% enhancement in permitted density may be awarded by the Planning Board where:
  1. special trail designs are incorporated in the open space areas;
  2. the general public is granted access to the open space; and/or
  3. the open space/trail network is linked with adjoining open space/trail network on an adjoining parcel(s).
- c. Natural Resources Reward. A 5% enhancement in permitted density may be awarded by the Planning Board where significant natural resources on the property are protected, including wetlands, steep slopes, important forests and fields, including specimen trees, other important vegetation, boulders, rock outcrops, and/or important wildlife habitats.
- d. Agriculture Reward. A 5% enhancement in permitted density may be awarded by the Planning Board where the development protects agriculturally valuable lands and allows for agricultural use in perpetuity through an appropriate legal instrument. The affected lands must constitute a significant proportion of the open space. It is required that permission be granted in a way that reasonably provides for agricultural use; whether the lands are actually placed in agricultural use does not affect the validity of this enhancement.
- e. Viewshed Reward. A 5% enhancement in permitted density may be awarded by the Planning Board where lands or corridors that contribute significantly to the visual landscape - such as open fields containing stone walls are protected.
- f. Historic Resources Reward. A 5% enhancement in permitted density may be awarded by the Planning Board where historically or architecturally significant buildings, structures or sites are preserved, restored, and/or protected, as appropriate.

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- g. Architectural Design Reward. A 5% enhancement in permitted density may be awarded by the Planning Board where architectural standards for single or two family houses are implemented to promote excellence in building design. The standards shall be established either through private covenants or as conditions of approval.
- h. Affordable Housing Reward. A 10% enhancement in permitted density may be awarded by the Planning Board if 5% or more of the dwelling units can provide for affordable housing as defined in this Ordinance.
- i. Other Rewards. A 5% enhancement in permitted density may be awarded by the Planning Board for the provision of at least 2 of the following measures:
  - 1. Minimized number of curb cuts onto existing Town or State maintained roads;
  - 2. The provision of through or looped streets within the development;
  - 3. Provision of village-like greens and open space;
  - 4. Implementation of low impact development practices;
  - 5. Contribution to school district or other town department to mitigate the cost of serving the project;
  - 6. Contributing to a stewardship fund to monitor the open space if donated to a non-profit organization.

Section 401.6 Open Space Ownership and Management

- A. *Open Space Ownership* - The type of ownership of land dedicated for open space purposes shall be selected by the owner, developer, or subdivider, subject to the approval of the Planning Board. Type of ownership may include, but is not necessarily limited to, the following:
  - 1) Public jurisdictions or agencies, subject to their acceptance;
  - 2) Quasi-public organizations (such as the Piscataquog River Watershed Association and the Society for the Protection of New Hampshire Forests), subject to their acceptance;
  - 3) Homeowner or cooperative associations or organizations;
  - 4) Shared, undivided interest by all property owners in the subdivision.
- B. *Homeowners Association* - Any common areas or common facilities within an Open Space Development shall be permanently protected by covenants and restrictions running with the land and shall be conveyed by the property owner(s) to a homeowners association or other legal entity under the laws of the State of New Hampshire, or may be deeded to the municipality with a trust clause insuring that it be maintained as open space, or to a private nonprofit organization, the principal purpose of which is the conservation of open space.

If common areas or common facilities are not dedicated to the general public use, they shall be protected by legal arrangements,

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approved by the Planning Board after legal review by town counsel, sufficient to assure their preservation, maintenance and management. Such approval shall take place prior to approval of the development. The cost of legal review shall be borne by the applicant or the developer. Any proposed change in such articles of association or incorporation shall require the prior written approval of the Planning Board.

Covenants or other legal arrangements shall specify ownership of the common land; responsibility for maintenance; compulsory homeowner's association membership and tax assessment provisions; guarantees that any association formed to own and maintain the open space development will not be dissolved without the consent of the Planning Board.

All lands and improvements shall be described and identified as to location, size, use and control in the restrictive covenant. These restrictive covenants shall be written so as to run with the land and become a part of the deed of each lot or dwelling unit within the development.

- C. *Maintenance of Open Space* - The person(s) or entity identified in Section 401.6, A as having the right to ownership or control over open space shall be responsible for its continuing upkeep and proper maintenance.
- D. *Current Use Limitation* - For purposes of this ordinance, the open space areas and natural areas in an approved development are considered to be part of the residential use of such development and shall not be considered to be "open space land", "farmland", "forest land", "wetland", "recreational land", "floodplain", or "wild land" within the meaning of New Hampshire RSA 79-A. The Planning Board shall require, as a condition for approval of an Open Space Development, that all deeds transferring any interest in the real property included in said development, specify that the open space will not qualify for current use treatment due to the operation of RSA 79-A:7(V)(b), since the same was used in satisfaction of density, setback, or other local, state or federal requirements leading to approval of this plan.



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Section 402        Recreational Camping Park Standards

The following regulations shall apply with respect to all recreational camping parks:

Section 402.1

A recreational camping park shall have an area of not less than 25 acres.

Section 402.2

Recreational camping parks shall provide for individual trailer spaces and/or tenting sites, access driveways and parking.

Section 402.3

Each trailer space shall be at least 1,800 square feet in area and at least 30 feet in width, and shall have a compacted gravel surface at least 10 feet in width and 20 feet in depth. A lot for a tent shall be at least 1,000 square feet in area.

Section 402.4

All interior roads within a recreational camping park that are two-way must be at least 30 feet in width and have a compacted gravel surface at least 20 feet in width. All interior roads within a recreational camping park that are one-way must be at least 20 feet in width and have a compacted gravel surface of at least 15 feet in width.

Section 402.5

A buffer area of natural vegetation at least 200 feet in width shall be maintained adjacent to all camping park property lines. This buffer area shall be maintained in compliance with a plan prepared to include generally accepted forest management and utilization practices. Said maintenance plan shall have prior approval by the Planning Board, and may be submitted to the County Forester for review. (Amended March 14, 2006.)

Section 402.6

No trailer space, tent site, service building, interior campground road or recreational facility shall be located within the specified buffer area. However, the first 100 feet of interior buffer area may be used for underground utilities, providing a plan showing the type and size of the utilities is reviewed and approved by the Planning Board prior to installation. (Amended March 9, 2004 and March 14, 2006.)

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Section 402.7

An electrical source supplying at least 30 amps, 120 volts, with weatherproof g.f.i. electrical outlets shall be provided for each trailer space. The installation shall comply with all applicable state and town electrical laws and regulations.

Section 402.8

Every recreational camping park shall have a dumping station for sewage disposal meeting all applicable state and local laws and regulations. The water supply source must meet all local and state regulations.

Section 402.9

Provision for the safe and sanitary disposal of solid waste shall be made, as approved by the Planning Board under Site Plan Review.

Section 402.10 Service Building Requirements

Each recreational camping park shall provide one or more service buildings in accordance with the following specifications:

- A. Flush-type Toilets--Minimum Distance from Camping Space. Flush-type toilets shall be placed in a building that is not more than 500 feet from any camping space nor less than 25 feet away from any camping space. In the event that any camping space is serviced by an on-site sewer connection, it shall be exempt from the requirement of being within 500 feet from the said toilet building. (Amended March 14, 2006.)
- B. Lighting Requirements. The service building shall be lighted with a light intensity of 5 foot candles measured at the darkest corner of the room.
- C. Construction Requirements. The building shall be a permanent structure sheathed with impervious material, adequately ventilated and with all openings to the outside effectively screened, shall be supplied with a floor drain, and shall comply with town and state requirements.
- D. Toilet Requirements. Separate toilet areas shall be provided for males and females in accordance with all applicable state and local laws.
- E. Lavatory Requirements. Toilet rooms shall contain one lavatory with hot and cold running water for each two toilets, but in no case shall any toilet room be without at least one lavatory with hot and cold running water.

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- F. Heating Requirements. Each service building shall have heating facilities to maintain a minimum temperature of 70 degrees Fahrenheit.
- G. Shower Requirements. Each service building shall have shower facilities with hot and cold running water.
- H. Campfire Requirements. Wood fires shall not be kindled except in fireplaces provided by the Recreational Camping Parks.
- I. Fire Permit Requirements. All Recreational Camping Park Owners/Operators or their Agent(s) shall obtain a Fire Permit in accordance with N.H. RSA 224.

Section 402.11

Any lawful recreational camping park existing at the time of adoption of this Ordinance or amendment thereto may continue although such use does not conform to the provisions of this regulation. However, all camping parks must comply with the applicable sanitation and health laws of the State of New Hampshire and the Town of New Boston. No non-conforming use that has been discontinued for a period of twelve consecutive months shall be re-established. Any additions, extensions or enlargements of a non-conforming recreational camping park shall be subject to the provisions of Article V of this Ordinance. Any additions, extensions or enlargements of a conforming recreational camping park shall be subject to the standards provided in Article IV, Section 402 of this Ordinance. In either event, Non-Residential Site Plan Review and/or Subdivision Approval will be required. (Amended March 13, 2001.)

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Section 403      Personal Wireless Service Facilities      (Section added March 13, 2001.)

Section 403.1      Authority

This ordinance is adopted by the Town of New Boston on March 13, 2001 in accordance with the authority as granted in New Hampshire Revised Statutes Annotated 674:16 & 674:21 and procedurally under the guidance of 675:1, II.

Section 403.2      Purpose and Goals

This ordinance is designed and intended to balance the interests of the residents of the Town of New Boston, personal wireless service facility providers and personal wireless service customers in the siting of personal wireless service facilities within the Town of New Boston, so as to ensure coordinated development of communications infrastructure while preserving the health, welfare and safety of the Town and its residents. This ordinance establishes general guidelines for the siting of personal wireless service facilities to enhance and fulfill the following goals:

- a) To preserve the authority of the Town of New Boston Planning Board to provide for reasonable opportunity for the siting of personal wireless service facilities and to allow the provision of such facilities to take place effectively and efficiently.
- b) To ensure that personal wireless service facilities are provided compatibly with the visual and environmental features of the Town.
- c) To reduce adverse impacts such facilities may create, including, but not limited to, impacts on aesthetics, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to person and property, and prosperity through protection of property values.
- d) To provide for co-location and minimal impact siting options through an assessment of technology, current locational options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town.
- e) To permit the construction of new personal wireless service facilities only where all other reasonable opportunities have been exhausted, and to encourage the owners of personal wireless service facilities to configure them in a way that minimizes the adverse visual impact of the personal wireless service facility.
- f) To require cooperation and co-location, to the greatest extent possible, between competitors in order to reduce cumulative negative impacts on the Town.
- g) To ensure that ongoing maintenance and safety inspections for all personal wireless service facilities are carried out.
- h) To provide for the removal of abandoned facilities that are no longer inspected for safety concerns and Building Code compliance; and to provide a mechanism for the Town to remove those abandoned facilities to protect the citizens from imminent harm and danger.

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- i) To provide for the removal or upgrade of facilities that are technologically outdated.

**Section 403.3     Applicability**

- A. The terms of this Article and the Site Plan Review Regulations shall apply to personal wireless service facilities proposed to be located on property owned by the Town, on privately owned property, and on property that is owned by any other governmental entity that acts in its proprietary capacity to lease such property to a carrier.
- B. *Amateur Radio; Receive-Only Antennas*  
This ordinance shall not govern any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas. This application adopts the provisions and limitations as referenced in RSA 674:16, IV.
- C. *Essential Services and Public Utilities*  
Personal wireless service facilities shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in the Town's ordinances or regulations. Siting for personal wireless service facilities is a use of land and is subject to the Town's Zoning Ordinance and all other applicable ordinances and regulations.

**Section 403.4     Definitions**

For the purposes of this Article, the following terms shall have the meaning given herein:

- A. *Alternative tower structure* - Innovative siting techniques that shall mean man-made trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.
- B. *Antenna* - The surface from which wireless radio signals are sent and/or received by a personal wireless service facility.
- C. *Antenna Array* - A collection of antennas attached to a mount to send and receive radio signals.
- D. *Average Tree Canopy Height* - An average height found by inventorying the height, above ground level (AGL), of all trees over twenty (20) feet in height within the area that extends for a distance of fifty (50) feet from the base of the mount, security barrier, or designated clear area for access to equipment, whichever is greatest. Trees that will be removed for construction shall NOT be used in this calculation.
- E. *Camouflaged* - A personal wireless service facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.
- F. *Carrier* - A company that provides personal wireless services. Also sometimes referred to as a provider.
- G. *Co-location* - The use of a single mount on the ground by more than one carrier (vertical co-location), or the use of more than one

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mount on the same site by more than one carrier (horizontal co-location), or the use of several mounts on an existing building or structure by more than one carrier.

- H. *Environmental Assessment (EA)* - An EA is a document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a personal wireless service facility is placed in certain designated areas.
- I. *Equipment Shelter* - An enclosed structure, cabinet, shed, vault, or box near the base of the mount within which are housed equipment for personal wireless service facilities such as batteries and electrical equipment. Equipment shelters are sometimes referred to as base transceiver stations.
- J. *FAA* - An acronym that shall mean the Federal Aviation Administration.
- K. *FCC* - An acronym that shall mean the Federal Communications Commission.
- L. *Facility* - See Personal Wireless Service Facility.
- M. *Fall Zone* - The area on the ground from the base of a ground mounted personal wireless service facility that forms a circle with a diameter equal to twice the height of the facility, including any antennas or other appurtenances. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.
- N. *Guyed Tower* - A monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.
- O. *Height* - The height above ground level (AGL) from the natural grade of a site to the highest point of a tower or other structure, even if said highest point is an antenna.
- P. *Lattice Tower* - A type of mount with multiple legs and structural cross-bracing between the legs that is self-supporting and freestanding.
- Q. *Mast* - A thin pole that resembles a street light standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.
- R. *Monopole* - A thicker type of mount than a mast that is self-supporting with a single shaft of wood, steel or concrete, or other material, that is designed for the placement of antennas and arrays along the shaft.
- S. *Mount* - The structure or surface upon which antennas are mounted, including the following four types of mounts:
  - (1) *Roof-mounted*. Mounted on the roof of a building.
  - (2) *Side-mounted*. Mounted on the side of a building.
  - (3) *Ground-mounted*. Mounted on the ground.
  - (4) *Structure-mounted*. Mounted on a structure other than a building.
- T. *Personal Wireless Service Facility (PWSF)* - Facility for the provision of personal wireless services, as defined by the Telecommunications Act of 1996, as amended. Personal wireless service facilities include a mount, antenna, equipment shelter, and other related equipment.

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- U. *Planning Board or Board* - Shall mean the Town of New Boston Planning Board.
- V. *Radio Frequency (RF) Engineer* - An engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.
- W. *Radio Frequency Radiation (RFR)* - The emissions from personal wireless service facilities.
- X. *Security Barrier* - A wall, fence, or berm that restricts an area from unauthorized entry or trespass.
- Y. *Separation* - The distance between one carrier's array of antennas and another carrier's array.
- Z. *Tower* - Shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like.

Section 403.5     District Regulations

A. *Location*

The siting of new or co-located personal wireless service facilities shall be permitted in all Zoning Districts. Applicants seeking approval for personal wireless service facilities shall first evaluate existing structures for the siting of personal wireless service facilities. Only after finding that there are no suitable existing structures pursuant to Section 403.5,C herein, shall a provider propose a new ground mounted facility.

B. *Existing Structures - Policy*

Personal wireless service facilities shall be located on existing structures, including, but not limited to, buildings, water towers, existing telecommunications facilities, utility poles or towers, and related facilities, provided that such installation preserves the character and integrity of those structures by being camouflaged to the greatest extent possible.

C. *Existing Structures - Burden of Proof*

The applicant shall have the burden of proving that there are no existing suitable structures on which to locate its personal wireless service facility and/or transmit or receive radio signals. To meet that burden, the applicant shall take all the following actions to the extent applicable:

1. The applicant shall submit to the Planning Board a list of all contacts made with owners of potential sites regarding the availability of potential space for a personal wireless service facility. If the Planning Board informs the applicant that additional existing structures may be satisfactory, the applicant shall contact the property owner(s) of those structures.

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2. The applicant shall provide copies of all letters of inquiry made to owners of existing structures and letters of rejection. If letters of rejection are not provided, at a minimum, unanswered "Return Receipt Requested" forms from the U.S. Post Office shall be provided for each owner of existing structures that was contacted.
3. If the applicant claims that a structure is not capable of physically supporting a personal wireless service facility, this claim must be certified by a licensed professional civil engineer. The certification shall, at a minimum, explain the structural issues and demonstrate that the structure cannot be modified to support the personal wireless service facility without unreasonable costs. The estimated cost shall be provided to the Planning Board.

**D. *Ground Mounted Facilities - Policy***

If the applicant demonstrates that it is not feasible to locate on an existing structure, ground mounted personal wireless service facilities shall be designed so as to be camouflaged to the greatest extent possible, including, but not limited to:

- use of compatible building materials and colors;
- screening, landscaping, and placement within trees;
- use of lower antenna mounts that do not protrude as far above the surrounding tree canopies;
- disguised personal wireless service facilities such as flagpoles, artificial tree poles, light poles, and traffic lights, that blend in with their surroundings;
- custom designed personal wireless service facilities that minimize the visual impact of a personal wireless service facility on its surroundings;
- other available technology.

**Section 403.6 Use Regulations**

**A. *General Provisions***

A personal wireless service facility shall require a building permit in all cases and Site Plan Review application and approval. Co-location of facilities must meet all current Site Plan Review Regulations. This section shall apply equally to the installation of personal wireless service facilities on existing structures and the construction of new personal wireless service facilities.

**B. *Existing Structures***

Subject to the provisions of this Article and Site Plan Review under RSA 674:43, a carrier may locate a personal wireless service facility on an existing structure, building, utility tower or pole, or water tower. For the purpose of this section, new structures that are conforming to all other district zoning requirements shall be considered as existing structures.

**C. *Ground Mounted Facility***

A personal wireless service facility involving construction of a ground



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mount shall require Site Plan Review and be subject to the provisions of this Article.

**Section 403.7     Dimensional Requirements**

Personal wireless service facilities shall comply with the following requirements:

**A.     *Height, Maximum***

In no case shall a personal wireless service facility exceed one hundred (100) feet in height.

**B.     *Height, Existing Structures and Utility Poles***

Carriers that locate new personal wireless service facilities on water towers, electric transmission and distribution towers, utility poles and similar existing utility structures, guyed towers, lattice towers, masts and monopoles may be permitted to increase the height of those structures no more than ten (10) feet, at the discretion of the Planning Board, if the additional height will not materially impair the visual impacts of the site. This increase in height shall only be permitted once for each structure.

**C.     *Height, Other Existing Structures***

The height of a personal wireless service facility shall not increase the height of an existing structure by more than ten (10) feet, unless the facility is completely camouflaged, for example, a facility completely within a flagpole, steeple, or chimney. The increase in the height of the structure shall be in scale and proportion to the structure as originally configured. A carrier may locate a personal wireless service facility on a building that is legally nonconforming with respect to height, provided that the provisions of this Article are met.

**D.     *Height, Ground-Mounted Facilities***

Ground-mounted personal wireless service facilities shall not project higher than twenty (20) feet above the average tree canopy height located within an area defined by a fifty foot (50') radius or perimeter of the mount, security barrier, or designated clear area for access to equipment, whichever is greatest. Refer to Section 403.4,D - Average Tree Canopy Height.

**E.     *Setbacks***

All personal wireless service facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located. Fences shall comply with the setback provisions of the zoning district in which the facility is located if the fence is six (6) feet or more in height, in accordance with the appropriate Zoning Ordinances.

**F.     *Fall Zone for Ground Mounts***

In order to ensure public safety, the minimum distance from the base of

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any ground-mount of a personal wireless service facility to any property line, public road, habitable dwelling, business or institutional use, or public recreational area shall be, at a minimum, the distance equal to the fall zone, as defined in this Article. The fall zone may cross property lines, so long as the applicant secures a fall zone easement from the affected property owner(s). The area of the easement shall be shown on all applicable plans submitted to the Town, and the terms of the easement shall be provided as part of the site plan review. The Planning Board, at its discretion, may reduce or eliminate the fall zone. Fall zones for personal wireless service facilities may overlap.

**G. *Fall Zone for Non-Ground Mounts***

In the event that an existing structure is proposed as a mount for a personal wireless service facility, a fall zone shall not be required, but the setback provisions of the zoning district shall apply. In the case of pre-existing non-conforming structures, personal wireless service facilities and their equipment shelters shall not increase any non-conformities.

**Section 403.8     Performance and Design Standards**

**A. *Visibility***

i) Visual impacts are measured on the basis of:

- \* Change in community scale, as exhibited in relative height, mass or proportion of the personal wireless service facility within its proposed surroundings.
- \* New visible elements proposed on a contrasting background.
- \* Different colors and textures proposed against a contrasting background.
- \* Use of materials that are foreign to the existing built environment.

ii) Enhancements are measured on the basis of:

- \* Conservation of opportunities to maintain community scale, e.g. buffering areas and low-lying buildings should not be compromised so as to start a trend away from the existing community scale.
- \* Amount and type of landscaping and/or natural vegetation.
- \* Preservation of view corridors, vistas, and viewsheds.
- \* Continuation of existing colors, textures, and materials.

iii) Visibility focuses on:

- \* Eliminating or mitigating visual impact.
- \* Protecting, continuing, and enhancing the existing environment.

**B. *Camouflage for Facilities on Existing Buildings or Structures - Roof Mounts***

When a personal wireless service facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal or camouflage the facility within or behind existing or new architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front façade in order to limit their impact on the building's silhouette.

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*C. Camouflage for Facilities on Existing Buildings or Structures - Side Mounts*

Personal wireless service facilities which are side mounted shall blend with the existing building's architecture and the panels shall be painted or shielded with material consistent with the design features and material of the building. All surfaces shall be non-reflective.

*D. Camouflage for Ground Mounted Facilities*

All ground-mounted personal wireless service facilities shall be surrounded by a buffer of dense tree growth that extends continuously for a minimum distance of one hundred and fifty feet (150') from the mount, security barrier, or designated clear area for access to equipment, whichever is greatest, and screens views of the facility in all directions. These trees must be existing on the subject property, planted on site, or be within a landscape easement on an adjoining site. The Planning Board shall have the authority to decrease, relocate, or alter the required buffer based on site conditions. The one hundred and fifty foot (150') vegetative buffer area shall be protected by a landscape easement or be within the area of the carrier's lease. The easement or lease shall specify that the trees within the buffer shall not be removed or topped, unless the trees are dead or dying and present a hazard to persons or property.

*E. Color*

To the extent that any personal wireless service facilities extend above the height of the vegetation immediately surrounding it, they shall be of a color which blends with the background or surroundings. All surfaces shall be non-reflective.

*F. Equipment Shelters*

Equipment shelters for personal wireless service facilities shall be designed consistent with one of the following design standards:

- i) Equipment shelters shall be located in underground vaults; or
- ii) Equipment shelters shall be designed so that the shelters are architecturally consistent, with respect to material and appearance, to the buildings in the area of the personal wireless service facility; or
- iii) Equipment shelters shall be camouflaged behind an effective year-round landscape buffer, equal to the height of the proposed building, and/or fence. The Planning Board shall determine the style of fencing and/or landscape buffer that is compatible with the neighborhood; or
- iv) If mounted on a roof top, the equipment shelter shall be concealed or camouflaged so that the shelter either is not visible at grade or appears to be a part of the original structure.

*G. Lighting, Signage, and Security*

- i) Lighting - The mounts of personal wireless service facilities shall be lighted only if required by the FAA. Lighting of equipment

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structures and any other facilities on site shall be shielded from abutting properties. Foot-candle measurements at the property line shall be 0.0 initial foot candles.

- ii) Signage - Signs shall be limited to those needed to identify the property and the owner and warn of any danger. All signs shall comply with the requirements of Article III, Section 318, of the New Boston Zoning Ordinance.
- iii) Security Barrier - The Planning Board shall have final authority on whether or not a ground mounted personal wireless service facility should be surrounded by a security barrier.

**H. *Scenic Landscapes and Vistas***

Ground-mounted facilities shall not be located within open areas that are clearly visible from public roads, recreational areas, or abutting properties, unless these personal wireless service facilities are hidden or disguised in such a way as to blend in with their surroundings. For example, the Planning Board might find a personal wireless service facility disguised as a flagpole to be acceptable. The Planning Board shall be empowered to make these decisions. All ground-mounted personal wireless service facilities shall be surrounded by a buffer of dense tree growth as per Section 403.7,D.

**I. *Driveways***

If available, existing entrances and driveways to serve a personal wireless service facility shall be utilized, unless the applicant can demonstrate that a new entrance and driveway will result in less visual, traffic, and environmental impact. New driveways to serve a personal wireless service facility shall not exceed twelve (12) feet in width. A gravel or crushed stone surface is encouraged.

**J. *Antenna Types***

Any antenna array placed upon an existing or proposed ground mount, utility pole, or transmission line mount shall have a diameter of no more than four feet (4'), exclusive of the diameter of the mount. A larger diameter antenna array may be permitted after a finding by the Planning Board that the visual impacts of a larger antenna array are negligible.

**K. *Ground and Roof Mounts***

All ground mounts shall be of a mast or monopole type mount. Lattice towers, guyed towers, and roof mounted monopoles are expressly prohibited.

**L. *Hazardous Waste***

No hazardous waste shall be discharged on the site of any personal wireless service facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least one hundred and ten percent (110%) of the volume of the hazardous materials stored or used on the site.

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**M. *Radio Frequency Radiation (RFR) Standards***

All equipment proposed for a personal wireless service facility shall be fully compliant with the FCC Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation (FCC Guidelines), under Report and Order, FCC 96-326, published on August 1, 1996, and all subsequent amendments.

**N. *Federal Requirements***

All personal wireless service facilities must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate personal wireless service facilities. If such standards and regulations are changed, then the owner of the personal wireless service facilities governed by this ordinance shall bring such personal wireless service facilities into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring personal wireless service facilities into compliance with such revised standards and regulations shall constitute grounds for the removal, in accordance with Section 403.11,C, of the personal wireless service facility, as abandoned, at the owner's expense through the execution of the posted security.

**O. *Building Codes-Safety Standards***

To ensure the structural integrity of personal wireless service facilities, the owner of a personal wireless service facility shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for personal wireless service facilities that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town concludes that a personal wireless service facility fails to comply with such codes and standards and constitutes a danger to persons or property, then, upon notice being provided to the owner of the personal wireless service facility, the owner shall have thirty (30) days to bring such personal wireless service facility into compliance with such standards. If the owner fails to bring such personal wireless service facility into compliance within thirty (30) days, such action shall constitute abandonment and grounds for the removal, in accordance with Section 403.11,C, of the personal wireless service facility, as abandoned, at the owner's expense through execution of the posted security.

**Section 403.9 Monitoring and Maintenance**

**A. *Maintenance***

The owner of the personal wireless service facility shall maintain the personal wireless service facility in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, and maintenance of the buffer areas, landscaping and camouflage materials. The Planning Board

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may direct the owner to perform maintenance that it determines is required.

**B. *Monitoring***

As part of the issuance of the site plan approval or building permit, the property owner and the owner of the personal wireless service facility shall agree that the Town of New Boston and/or its appointed representative(s) may enter the subject property to obtain RFR measurements and noise measurements, and to perform maintenance inspections at the expense of the carrier. In the case of taking RFR and/or noise measurements, the Town may enter without any advance notice to either the property owner or the personal wireless service facility owner. In all other cases, the Town shall provide reasonable written notice to the carrier and landowner and provide them with the opportunity to accompany the Town representatives when the inspections are conducted.

**Section 403.10 Bonding and Security and Insurance**

Recognizing the hazardous situation presented by abandoned and unmonitored personal wireless service facilities, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned personal wireless service facilities in the event that a facility is abandoned and the facility owner is unwilling or unable to remove the facility in accordance with Section 403.11, C. The amount of the security shall be based upon the removal cost, plus fifteen percent (15%), provided by the applicant and certified by a professional civil engineer licensed in New Hampshire. The owner of the facility shall provide the Planning Board with a revised removal cost estimate and structural evaluation prepared by a professional civil engineer licensed in New Hampshire every five (5) years from the date of the Planning Board's approval of the site plan. If the cost has increased more than fifteen percent (15%) then the owner of the facility shall provide additional security in the amount of the increase. Furthermore, the Planning Board shall require the submission of proof of adequate insurance covering accident or damage. Should the facility owner discontinue or abandon the facility in accordance with Section 403.11 and the facility is physically removed in accordance with Section 403.11, the security being held by the Town shall be released within thirty (30) days of confirmation of satisfactory removal by the Planning Board or its designated agent.

**Section 403.11 Abandonment or Discontinuation of Use**

Beginning 12 months after Planning Board approval, and continuing on an annual basis thereafter, the owner of a personal wireless service facility shall provide the Planning Board with written, signed certification that the personal wireless service facility is being used to provide the citizens of the Town with personal wireless services as defined. Failure to comply with this requirement shall constitute an admission that the personal wireless service facility is not in use and has been abandoned.

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**A. *Abandonment***

Any personal wireless service facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said personal wireless service facility provides proof of quarterly inspections. The owner shall physically remove the abandoned personal wireless service facility within ninety (90) days of receipt of a declaration of abandonment from the Town notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the personal wireless service facility. If the abandoned personal wireless service facility is not removed within 90 days, the Town may execute the security and have the personal wireless service facility removed. If there are two or more users of a single personal wireless service facility, this provision shall not become effective until all users cease using the personal wireless service facility.

**B. *Discontinuance***

At such time that a carrier plans to abandon or discontinue operation of a personal wireless service facility, such carrier shall notify the Town by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than thirty (30) days prior to abandonment or discontinuance of operations. In the event that a carrier fails to give such notice, the personal wireless service facility shall be considered abandoned upon such discontinuance of operation.

**C. *Removal***

Upon abandonment or discontinuance of use, the owner of the personal wireless service facility shall physically remove the personal wireless service facility within ninety (90) days from the date of abandonment or discontinuance of use. "Physically remove" shall include, but not be limited to:

- i) Removal of antennas, mounts, equipment shelters and security barriers from the subject property.
- ii) Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
- iii) Restoring the location of the personal wireless service facility to its natural condition, except that any landscaping and grading shall remain in the after-condition.

**D. *Failure to Remove***

If the owner of the personal wireless service facility does not remove the personal wireless service facility upon notice from the Town, then the Board of Selectmen shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. The owner of the facility shall dismantle and remove the facility within ninety (90) days of receipt of the declaration of abandonment by the

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Board of Selectmen. If the abandoned personal wireless service facility is not removed within ninety (90) days, the Town may execute the security to pay for this action.

*E. Failure to Maintain*

If the owner of the facility fails to maintain the facility in accordance with the directions of the Planning Board pursuant to Section 403.9,A, then the Board of Selectmen shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. The owner of the facility shall dismantle and remove the facility within ninety (90) days of receipt of the declaration of abandonment from the Board of Selectmen. If the abandoned facility is not removed within ninety (90) days, the Town may execute the security to pay for this action.

**Section 403.12 Timing of Operation**

Operation of a personal wireless service facility shall commence no later than twelve (12) months from the date the application was approved. If the personal wireless service facility is not operating and providing the citizens of the Town with personal wireless services, as defined, within this time period, the applicant shall report to the Planning Board in writing stating the reasons why the personal wireless service facility is not operating. The applicant may request an extension to the deadline for operation and the Planning Board may consider same or, at its discretion, may revoke the approval. (Amended March 9, 2010.)

If Planning Board approval is revoked and construction has begun, the personal wireless service facility shall be considered to be abandoned.



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Section 404      Accessory Dwelling Units      (Section added March 10, 2009.)

Section 404.1      Authority and Purpose

Pursuant to the authority granted under RSA 674:16,II and 674:21,IV, (b), as amended, the Town of New Boston hereby adopts the following regulations. For the purposes of providing expanded affordable housing opportunities, including rental potential, and providing flexibility in household arrangements, accessory dwelling units shall be permitted in the Residential-Agricultural district in conformance with these regulations.  
(Amended March 9, 2010.)

Section 404.2      Definition

Dwelling Unit, Accessory: A single detached secondary dwelling unit, constructed either within an existing accessory building or within an accessory building constructed for that purpose, that is subordinate to the permitted principal dwelling unit in accordance with the provisions of this section.

In the event that an existing dwelling unit on a lot meets the requirements and limitations of an accessory dwelling unit, a second dwelling of any size, meeting all other zoning and building code requirements, may be built on the same lot to be considered thereafter the principal dwelling unit.  
(Section added March 9, 2010.)

Section 404.3      Requirements/Limitations

1. Accessory dwelling units are permitted in the Residential-Agricultural "R-A" District. (Amended March 9, 2010.)
2. Accessory dwelling units are intended to be secondary and accessory to a principal single-family dwelling unit.
3. Either the principal dwelling unit or the accessory dwelling unit shall be occupied by the owner of the lot on which the dwellings are located.
4. Accessory dwelling units shall not be permitted on any lot with an existing two-family dwelling. Nor shall a two family dwelling be permitted on any lot with an existing accessory dwelling unit.
5. The secondary dwelling unit shall be developed in a manner which does not alter the character or appearance of the principal dwelling unit as a single-family residence. (Amended March 9, 2010.)
6. Only one accessory dwelling unit shall be allowed per principal dwelling unit and/or lot.
7. The accessory dwelling unit shall have an independent address designation from the principal dwelling.
8. Detached accessory dwelling units cannot be converted to a principal dwelling unit.
9. An accessory dwelling unit shall have conditioned space of no less than 300 square feet and no greater than 1,000 square feet. (Amended March 9, 2010.)

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10. A septic system shall be provided in accordance with State regulations.
11. Adequate off-street parking shall be provided.
12. Adequate provisions must exist or be made for ingress, egress and turning of vehicles within the site.
13. A second driveway shall not be permitted unless it meets the requirements of the Town of New Boston Driveway Regulations.
14. All criteria of the Zoning District including, but not limited to, lot sizes, frontages, yard requirements and height requirements, wetland setbacks, and so on, shall be met.

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Section 405      Small Wind Energy Systems

Section 405.1      Authority and Purpose

This small wind energy systems ordinance is enacted in accordance with RSA 674:62-66, and the purposes outlined in RSA 672:1-III-a. The purpose of this ordinance is to accommodate distributed generation/ small wind energy systems in appropriate locations, while protecting the public's health, safety and welfare. In addition, this ordinance provides a permitting process for small wind energy systems to ensure compliance with the provisions of the requirements and standards established herein.

Section 405.2      Definitions

Meteorological tower (met tower): Includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. For the purpose of this ordinance, met towers shall refer only to those whose purpose is to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

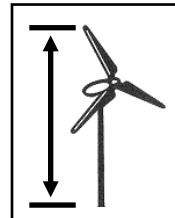
Net metering: The difference between the electricity supplied over the electric distribution system and the electricity generated by the small wind energy system that is fed back into the electric distribution system over a billing period.

Power grid: The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

Shadow flicker: The visible flicker effect when rotating turbine blades cast shadows on the ground and nearby structures causing the repeating pattern of light and shadow.

Small wind energy systems: A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less.

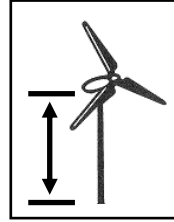
System height: The height above grade of the tip of the wind turbine blade when it is at its highest point.



Tower: The monopole, guyed monopole or lattice structure that supports a wind turbine.

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Tower height: The height above grade of the fixed portion of the tower, excluding the wind turbine.



Wind turbine: The blades and associated mechanical and electrical conversion components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

**Section 405.3      Procedure for Review**

- A. Building Permit: Small wind energy systems and met towers are an accessory use permitted in all zoning districts where structures of any sort are allowed. No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the Building Inspector. A building permit shall be required for any physical modification to an existing small wind energy system that materially alters the size and/or type of the small wind energy system or its location. Like-kind replacements shall not require a building permit to be modified. Met towers that receive a building permit shall be permitted on a temporary basis not to exceed one (1) year~~s~~ from the date the building permit was issued.
- B. Application: Applications submitted to the Building Inspector shall contain a site plan with the following information:
  - 1. Property lines and physical dimensions of the applicant's property.
  - 2. Location, dimensions and types of existing structures on the property.
  - 3. Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.
  - 4. Tower blueprints or drawings including foundation details.
  - 5. Setback requirements as outlined in this ordinance.
  - 6. The right-of-way of any public road that is contiguous with the property.
  - 7. Any overhead utility lines.
  - 8. Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.
  - 9. Small wind energy systems that will be connected to the power grid shall include a copy of the application for interconnection with their electric utility provider.
  - 10. Sound level analysis prepared by the wind turbine manufacturer or qualified engineer.
  - 11. Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to State, Federal and International building or electrical codes or laws.

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12. Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
  13. List of abutters, with names and addresses, to the applicant's property.
- C. Abutter and Regional Notification: In accordance with RSA 676:66, the Building Inspector shall notify all abutters by certified mail upon application for a building permit to construct a small wind energy system. The Building Inspector shall also notify the Planning Board of the application by inter-office communication. The public will be afforded 30 days to submit comment to the Building Inspector prior to the issuance of the building permit. The Building Inspector shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the Building Inspector shall follow the procedures set forth in RSA 36:57, IV.
- D. The construction of a met tower for the purpose of collecting data to develop a small wind energy system shall abide by the following requirements:
1. The construction, installation or modification of a met tower shall require a building permit and shall conform to all applicable sections of the state building code.
  2. Met towers shall be permitted on a temporary basis not to exceed one (1) year.
  3. Met towers shall adhere to the small wind energy system standards.
  4. The applicant shall provide the expected date of removal of the met tower and details for restoration of the site to its natural condition.

**Section 405.4     Standards**

- A. The Building Inspector shall evaluate the application for compliance to the following standards:
1. Setbacks: The setback shall be calculated by multiplying the minimum setback requirement number by the system height and measured from the center of the wind turbine base to property line, public roads, or nearest point on the foundation of an occupied building.

Minimum Setback Requirements			
Occupied Buildings on Participating Landowner Property	Occupied Building on Abutting Property	Property Lines of Abutting Property and Utility Lines	Public Roads
0	1.5	1.1	1.5

- a. Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.
- b. Guy wires used to support the tower are exempt from the small wind energy system setback requirements.

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2. Tower: The maximum tower height shall be restricted to 35 feet above the tree canopy within 300 feet of the small wind energy system. In no situation shall the tower height exceed 150 feet.
3. Sound Level: The small wind energy system shall not exceed 60 decibels using the A scale (dBA), as measured at the site property line, except during short-term events such as severe wind storms and utility outages.
4. Shadow Flicker: Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. Significant shadow flicker is defined as more than 30 hours per year on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.
5. Signs: All signs including flags, streamers, and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for manufacturer identification or appropriate warning signs.
6. Code Compliance: The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.
7. Aviation: The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations, including but not limited to 14 C.F.R. part 77, subpart B, regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424.
8. Visual Impacts: It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access the wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.
  - a. The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, turbine design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground.
  - b. The color of the small wind energy system shall be painted with a non-reflective, unobtrusive color that blends in with the surrounding environment. Approved colors include but are not limited to white, off-white or gray.
  - c. A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.
9. Approved Wind Turbines: The manufacturer and model of the wind turbine to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New

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- York State Energy Research and Development Authority, or a similar list approved by the State of New Hampshire, if available.
10. Utility Connection: If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A:9.
  11. Access: The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
  12. Clearing: Clearing of natural vegetation shall be limited to the minimum necessary for the construction, operation and maintenance of the small wind energy system and as otherwise prescribed by applicable laws, regulations, and ordinances.

Section 405.5     Abandonment or Discontinuance

- A. At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the Planning Board by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.
- B. Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the Planning Board. "Physically remove" shall include, but not be limited to:
  - a. Removal of the wind turbine and tower and related above-grade structures.
  - b. Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in the after-conditions.
- C. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12 month period. After the 12 months of inoperability, the Planning Board may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. After review of the information provided by the owner, the Planning Board shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the Planning Board shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.
- D. If the owner fails to respond to the Notice of Abandonment or if, after review by the Planning Board, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall physically remove the wind turbine and tower at the owner's sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system after the Notice of

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Abandonment procedure, the Planning Board may pursue legal action to have the small wind energy system physically removed at the owner's expense.

Section 405.6 Violation

It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt from this ordinance except when modifications are proposed to the small wind energy system.

Section 405.7 Penalties

Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed by NH Revised Statutes Annotated Chapter 676.



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**ARTICLE V                   NON-CONFORMING USE(S) /STRUCTURE(S)**

Section 501           Continuance

All legal non-conforming properties in active use when this Ordinance is passed and adopted, and as amendments are passed and adopted, may continue indefinitely in their present use. (Amended March 13, 2001.)

Section 502           Lots of Record

Where a lot of record on, or prior to, March 8, 1977 does not conform to the area and width requirements, such lot may be occupied by any permitted use.

Section 503           Alteration, Expansion and Change of Use

Any and all non-conforming property may be altered and expanded internally as the business and conditions warrant, providing, however that any such expansion does not make any existing conforming building non-conforming within the terms of this Ordinance; nor shall the change or expansion render the premises proportionally less adequate for the use in terms of the requirements of this Ordinance; nor shall the height exceed the limits as defined; nor shall such property be materially altered in purpose of the particular use category; nor shall the change or expansion have a substantially different impact on abutting property or the neighborhood. Non-Residential Site Plan Review shall be required in any event.

Section 503.1       COM/IND Exception

Any expansion of a legal non-conforming residential use in a Commercial or Industrial District shall be prohibited. The legal non-conforming residential use is restricted to the established area at the inception of the rezoning to these districts.

Section 504           Destruction

Any and all non-conforming property which is partially or totally destroyed by reason of obsolescence, fire or other act of God may be restored, remodeled and operated, if started and reasonably continuing within two (2) years. Intent to resume a non-conforming use shall not confer the right to do so.

Section 505           Normal Maintenance

Normal maintenance and repairs of a building containing a non-conforming use is permitted.

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Section 506      Termination

A non-conforming use shall be deemed to have been terminated and shall not thereafter be reinstated:

1. When it is changed to conforming use; or,
2. When it has been discontinued for a period of two (2) consecutive years.

ARTICLE VI            DEFINITIONS

For the purpose of this Ordinance, certain terms or words used herein shall be interpreted as follows:

Section 601            Word Definitions

The word person includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.

The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.

The words shall and will are mandatory; the word may is permissive.

The words used or occupied include the words intended, designed, or arranged to be used or occupied.

The word lot includes the word parcel.

Section 602            Term Definitions

Abutter: Any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356-B:3,XXIII. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a manufactured housing park form of ownership as defined in RSA 205-A:1, the term "abutter" includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board. Per RSA 672:3, as amended. (Amended March 11, 2003.)

Accessory Building or Use: A building or use subordinate and customarily incidental to the main building or use on the same lot. The term "accessory building", when used in connection with a farm, shall include all buildings customarily used for farm purposes.

Agriculture, Farm & Farming: 1. The word "farm" means any land, buildings, or structures on or in which agriculture and farming activities are carried out or conducted and shall include the residence or residences of owners, occupants, or employees located on

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such land. Structures shall include all farm outbuildings used in the care of livestock, and in the production and storage of fruit, vegetables, or nursery stock; in the production of maple syrup; greenhouses for the production of annual or perennial plants; and any other structures used in operations as listed in Number 2 below:

2. The words "agriculture" and "farming" shall mean all operations of a farm as listed in RSA 21:34-a, as amended, and shall also include the practice of veterinary medicine. (Amended March 13, 2001, and March 9, 2010.)

Auto Service Station: Any area of land, including structures thereon, that is used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles and which may include facilities used for polishing, greasing, washing, minor mechanical repairs or otherwise cleaning or servicing such motor vehicles and including as an accessory use a convenience store, but not including a drive through window. A service station is not a vehicular sales or repair facility. (Amended March 10, 2009.)

Bank/Financial Institution: A state or federally chartered bank, savings association, or credit union, located in a building or portion thereof which provides for the custody, loan, exchange or issue of money, the extension of credit, or facilitating the transmission of funds, and which may include accessory drive-up customer service facilities on the same premises. This does not include small loan businesses or check cashing facilities. (Added March 10, 2009.)

Bed and Breakfast/Inn: A dwelling in which, for compensation, sleeping accommodations are provided to transient guests under management and operation of the owner/occupants of the dwelling. A Bed and Breakfast/Inn may include the provision of meals for overnight guests only. (Added March 10, 2009.)

Building: A constructed unit having a roof and forming a shelter for persons, animals or property. Where the context allows, the word "building" shall be construed as followed by the words "or part thereof". (Amended March 9, 2010.)

Building Front Line: Line parallel to the front lot line transecting that point in the building face which is closest to the front lot line except for minor projections as provided for in Article III.

Building Height: Vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat and mansard roofs, and to the average height between eaves and ridge for other types of roofs. (Amended March 11, 2003.)

Business Incubator: A business, either for-profit or non-profit, that assists start-up companies with establishing their business. An incubator provides below-market rent on office space and shared

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services such as teleconferencing equipment, a conference room, and secretarial services. Marketing, legal, and accounting services also may be provided. Private businesses and developers, public agencies, or universities may operate business incubators. (Added March 10, 2009.)

Car Wash: Any building or premises used primarily for washing motor vehicles. Car washes may also provide polishing, detailing, and may offer vacuum machines to allow owners to clean the interior of their vehicles. (Added March 10, 2009.)

Contractor's Yard: A lot or portion of a lot or parcel used to store and maintain construction equipment and other materials and facilities customarily required in the construction trades by a contractor. (Added March 10, 2009.)

Coverage: That percentage of the lot area covered by a building. Where not otherwise specified, coverage shall be limited by set-back requirements.

Cul-de-sac Street: A street having one open end and being permanently terminated at the other by a vehicular turnaround.

Drive-in Service: Any drive-in service or free standing retail stand.

Dwelling, One-Family: A detached or free-standing residence including Manufactured Housing, designed for and occupied by one family only.

Dwelling, Two-Family: A single residential building designed for or occupied by two families living independently of each other in individual attached dwelling units.

Dwelling, Multi-Family: A single residential building designed for or occupied by three or more families.

Dwelling, Seasonal: A residence used only for casual and intermittent occupancy, such as, but not limited to a second home, a vacation home, a summer cottage, a ski chalet, and such similar dwelling. Such a dwelling shall not be the principal place of residence of the occupant.

Dwelling Unit: One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking, sanitary and sleeping facilities. It shall include sectional homes, manufactured homes, and modular units provided these units meet the standards of the local building code but shall not include motel, hotel, lodging house or similar structures.

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Essential Services: The erection, construction or major alteration by public utility companies of underground or overhead gas, electrical, sewer, or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduit cables, and similar equipment and accessories in connection therewith, and including buildings reasonably necessary for the furnishing of such services by public utility companies. This shall not include minor relocations or minor additions such as street lights, hydrants, wire, fire alarm boxes or pipes and the replacement of facilities except for buildings.

Expanded Home Business: Accessory use that is conducted entirely within the dwelling or accessory building by the residents thereof, which is clearly secondary to the dwelling use for living purposes and does not change the character thereof. The expanded home business is intended to provide for business activities such as those related to telephone, postal and/or computer related business activities, which do not include servicing the public on-site. In the event that the owner and the resident are not the same, the owner of the property shall authorize the application for the proposed use. Non-Residential Site Plan Review will be required of all expanded home businesses.

Family: Any number of persons related by blood or by marriage, or not more than three persons not related by blood or by marriage, living together as a single housekeeping unit. In the event that a residential use is proposed, occupancy of which will be by more than three unrelated persons, and those persons are handicapped within the meaning of the Fair Housing Act, the applicant may apply to the ZBA for a variance as a reasonable accommodation, which variance will be considered in accordance with RSA 674:33, (V), and, the ZBA shall grant the same unless it is demonstrated, by the record in such proceeding, that the proposed use would have a significant and permanent damaging impact on the town and the neighborhood which could not be avoided by the imposition of any reasonable conditions. (Amended March 14, 2006.)

Family Day-Care Home: A residence occupied by the provider in which child care is regularly provided for any part of a day (but less than 24 hours, except in emergencies) for one (1) to six (6) children from one or more unrelated families. The maximum of six (6) children includes children under six years of age who are living in the home and children related to the applicant who are received for child care.

Family Day-Care Homes which are approved by the N.H. Department of Health and Welfare to provide services to school-age children shall care for no more than three (3) school-age children, including the provider's own children, and other children residing in the home (up to 10 years old), in addition to the allowed number of pre-school children. (Amended March 13, 2001.)

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Frontage: The width of a lot measured along its common boundary with the street line or street which is Class V or higher. (Amended March 14, 2006.)

Fuelwood Processing Yard: This is a term for land/sites on which fuelwood (firewood) is prepared for wholesale and retail sales. Activities in the yard include, but are not limited to: delivery of tree length wood; delivery of wood cut to length (usually bolts 4 feet in length); cutting to random lengths specified by customers; splitting to size specified by customers; loading of firewood; and, removal of firewood from the site by truck. Equipment that may be utilized on the site includes: chainsaws, self contained firewood processors, wood splitters, front end loaders, self powered conveyors, dump trucks, trailers, pickup trucks, personal vehicles, and logging trucks. One to several personnel may be employed in the activity.

Funeral Home: Every place or premise, licensed in the State of New Hampshire, devoted to or used in the care and preparation for the funeral and burial of deceased human bodies or maintained for the convenience of the bereaved for viewing or other services in connection with deceased human bodies or as an office or place for carrying on the profession of funeral directing. (Added March 10, 2009.)

Gallery: A room or building devoted to the exhibition of works of art; and, an institution or business exhibiting or dealing in works of art. (Added March 10, 2009.)

General Service or Repair Establishment: A commercial establishment, the primary concern of which is the rendering of service and repair activities on equipment and appliances rather than the sale of goods. Such establishments include but are not limited to: watch, clock, radio, television, home appliances and bicycle repair. Retail sales shall be allowed as incidental uses in general service or repair establishments. (Added March 10, 2009.)

Gross Building Area: The total square footage of all areas of all floors contained within the "footprint" of any building. For parking calculations see Section 314.

Group Child Day Care Center: A facility for the care of ~~the~~ children and as defined in RSA 170-E:2(IV)(2). (Added March 10, 2009.)

Hazardous Waste: Those wastes where significant potential exists for causing adverse public health or environmental impacts if the waste is handled, stored, transported, treated, or disposed of in that manner customarily accepted for ordinary solid wastes; materials subject to special state or federal licensing; materials designated hazardous by the federal government or the State of New Hampshire. (Added March 10, 2009.)

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Health Club/Gym: A building which is occupied and used exclusively for physical health fitness programs and to provide facilities for group and individual exercise and physical well being. (Added March 10, 2009.)

Home Business: Accessory use of a professional or service character that is conducted entirely within the dwelling or an accessory building by the residents thereof, which is clearly secondary to the dwelling use for living purposes and does not change the character thereof. In the event that the owner and the resident are not the same, the owner of the property shall authorize the application for the proposed use. Non-Residential Site Plan Review will be required of all home businesses.

Home Occupation: Home occupation shall be as defined in Section 401.2, F, of this Ordinance. (Added March 9, 2010.)

Home Shop: Home shop such as electrician, plumber, building contractor, excavator, trucking, or other similar tradesman shop, or business whose primary activity is performed at a site other than the home lot which shall be shown to be of such character as to not require outside storage visible to the surrounding properties and shall not be a source of nuisance to neighbors by reason of noise, dust, glare, traffic, vibration, and/or other disruptive influence, and which employs no more than two (2) individuals who are outside of the family for on-site staff. Non-Residential Site Plan Review will be required of all home shops.

Hospital: Includes sanitarium, clinic, nursing home, convalescent home, and any other place for the diagnosis, treatment or care of human ailments.

Hotel/Motel: An establishment where guests are required to register where lodging is offered to transient guests for compensation and in which there are more than five (5) sleeping rooms. (Added March 10, 2009.)

Kennel: An establishment in which dogs or domesticated animals are housed, groomed, bred, boarded, trained, or sold, all for a fee or compensation. (Amended March 10, 2009.)

Lodging House: Any dwelling (other than a hotel or motel) in which living accommodations without individual kitchen facilities are rented to three or more guests. A boarding, bed-and-breakfast, inn or rooming house shall be deemed a lodging house, and more specifically described as follows:  
-A boarding or rooming house shall accommodate non-transient guests and may provide them with regular meals;  
-A bed-and-breakfast shall accommodate transient guests and provide them with breakfast;



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-An inn shall accommodate transient guests for lodging but may also serve the general public, as well as the guests, in a restaurant facility.

Log Concentration Yard: This is a common name for land/sites on which sawlogs are processed and marketed to various buyers. Activities in the log concentration yard include, but are not limited to: cutting to length, sorting and stockpiling by species and grade, log deliveries by truck, removal of logs from the site by truck, chipping of cull log materials and removal by box trailer, and log scaling by weight or scale stick. Equipment that may be utilized in the log concentration yard includes: chainsaws, log trucks, truck scales, mobile log loading equipment, mobile wood chippers, box trailer trucks, log slasher (mobile power saw used to cut tree length logs to sawlog specifications), pickup trucks, and personal vehicles. Normally associated with this use are buildings used as an office, for equipment storage garages, and for truck scale houses. One to several personnel may be employed in the activity.

Long Term Care Facility: A building or portion thereof primarily used for the residence and care of individuals. This includes assisted living facilities, nursing facilities and residential care facilities, all as defined in RSA 151-E:2. (Added March 10, 2009.)

Lot: A lot is a parcel of land occupied or to be occupied by only one main building and use and the accessory buildings or uses customarily incidental to it, except in the Small Scale Planned Commercial District under the provisions of Section 204.2. A lot shall be of sufficient size to meet minimum zoning requirements for use, coverage and area, and to provide such yards and other open spaces as are herein required. (Amended March 12, 2013.)

Lot Area: The horizontal area of the lot lying within the lot lines, exclusive of any area in a street right-of-way.

Lot, Back (backlot): A lot using backland, thereby, being behind a road frontage lot, and having 50' of road frontage on a Class V or better road.

Lot, Corner: A lot situated at the intersection of, and abutting, two streets which have an angle of intersection of not more than 135 degrees. A lot abutting a curved street shall be deemed a corner lot if the tangents to the curve at its points of intersection with the side lot lines meet at an interior angle of not more than 135 degrees.

Lot of Record: A lot which is part of a subdivision of record in the office of the County Register of Deeds, or a lot or parcel described by metes and bounds, the description of which has been so recorded.

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Main Building or Use: A building or use which houses or constitutes the principal activity on the premises.

Manufactured Housing: Any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating, and electrical heating systems contained therein. Manufactured housing as defined herein shall not include presite built housing as defined in RSA 674:31-a. All manufactured housing shall conform to the "Manufactured Home Construction Safety Standards Code" of the U.S. Department of Housing and Urban Development or successor organization.

Manufactured Housing Park: Any tract of land on which two or more manufactured housing units are parked and occupied for living purposes.

Medical/Dental Clinic: A building or structure or portion thereof where persons receive outpatient medical examinations, treatments, and procedures from licensed practitioners. This definition shall include doctors' and dentists' offices, and the offices of any other licensed and/or certified health care providers. (Added March 10, 2009.)

Membership Club: A social, sports, or fraternal association or other organization comprised of groups of people organized for a common purpose to pursue common goals, interests, or activities, used exclusively by members and their guests and not conducted as a gainful business. Membership clubs are usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, and/or a constitution and bylaws. (Added March 10, 2009.)

Motor Home: A portable, temporary dwelling to be used for travel, recreation and vacation, and constructed as an integral part of a self-propelled vehicle.

Museum: An institution devoted to the procurement, care, study, and display of objects of lasting interest or value and a place where such objects are exhibited. (Added March 10, 2009.)

Newspaper: An establishment that carries out operations necessary for producing and distributing newspapers, including gathering news; writing news columns, feature stories, and editorials; and selling and preparing advertisements. These establishments may publish newspapers in print or electronic form. Best management practices shall be followed for the proper disposal of any chemicals, dyes, or other hazardous materials. (Added March 10, 2009.)

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Non-Conforming Building: A non-conforming building means a structure or part thereof not in compliance with the zoning ordinance covering building bulk, dimensions, height, area, yards, or density where such structure conformed to all applicable laws, ordinances and regulations prior to the enactment of this zoning ordinance.

Non-Conforming Use: A use which lawfully occupied a building or land at the effective date of this Ordinance, or amendments thereto, and that does not conform to the use regulations of the district in which it is located.

Office: A building or portion thereof in which no merchandise is displayed or exchanged and which is used for conducting predominantly administrative, professional, or clerical operations generally furnished with desks, tables, files, and communication equipment. Examples include architect, attorney, accountant, engineer, surveyor, drafting service, designer, planner, real estate agent, insurance agent, etc. (Added March 10, 2009.)

Parking Space, Off-Street: For the purposes of these regulations, an off-street parking space shall consist of a space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room. Required off-street parking areas for three or more automobiles shall have individual spaces marked, and shall be so designed, maintained, and regulated that no parking or maneuvering incidental to parking shall be on any public street, walk, or alley, and so that any automobile may be parked without moving another.

Personal Services: Establishments primarily engaged in providing services involving the care of a person or his or her apparel, such as laundry, beauty shops, shoe repair, clothing rental. Retail sales shall be allowed as incidental uses in personal service establishments. (Amended March 10, 2009.)

Pharmacy: A store where the primary business is the filling of medical prescriptions and the sale of drugs, medical devices and supplies, and nonprescription medicines but where nonmedical products may be sold as well. A Pharmacy may include accessory drive-up customer service facilities on the same premises. (Added March 10, 2009.)

Printing/Copying: An establishment that carries out the process of applying images to a variety of surfaces. Some printing processes include: offset lithography, thermography, la gravure, letterpress, silkscreen, digital, laser, dye sub, photographic, desktop publishing and photocopying. Best management practices shall be followed for the proper disposal of any chemicals, dyes, or other hazardous materials. (Added March 10, 2009.)

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Private School: A school which is privately owned that provides instruction and/or education of individuals for tuition, fees or other form of compensation. This includes schools in which special subjects or skills are taught, such as art, dance and photography. (Amended March 10, 2009.)

Public Use: Any building to be used for public assembly such as a library, Town Hall, Town Office, fire station, public school, etc.

Recreational Facility, Indoor: A recreational activity, taking place totally within a structure or building, to include such facilities as bowling alleys, roller skating rinks, indoor arcades, indoor paintball, climbing walls, indoor soccer and similar uses. (Amended March 10, 2009.)

Recreational Facility, Outdoor: Outdoor recreation activities, including such facilities as outdoor tennis courts, swimming pools, miniature golf courses, play fields, and similar uses. No buildings shall be allowed except for the necessary related uses such as restrooms and maintenance facilities. (Amended March 10, 2009.)

Removal of Earth Products: The removal of earth products is the removal of loam, sand, gravel, stone, or other fill material for sale in commercial quantities, or for use in another location.

Research & Development Facility: A business that engages in research, or research and development, in technology-intensive fields. Examples include, but are not limited to, laboratories, scientific, medical, chemical, applied physics, mechanical, electronic, biological, genetic or other similar experimental research, product development or testing facilities. Development and construction of prototypes may be associated with this use but no facilities for manufacturing or sales of products are permitted. Research and Development Facilities shall not produce significant amounts of hazardous waste. Best management practices shall be followed for the proper disposal of any hazardous materials. (Added March 10, 2009.)

Restaurant:

- 1) An establishment that serves food, beverages and desserts primarily to persons located on the premises.
- 2) In any case curb side service is permitted for pre-ordered meals and snacks. Drive through service is prohibited. (Added March 10, 2009.)

Retail Store: Includes gift shop, store, and department store not to exceed 30,000 square feet, for the sale of retail goods. (Amended March 10, 2009.)

Sawmill: Sawmill operations or forest products manufactured in structures provided they are not within 200 feet of any property line and provided that outdoor storage shall not be located within the

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required front yard or within 50 feet of any property line. Portable sawmills shall be allowed in any zone for a maximum two (2) year period with the required permit issued by the Town.

Self-Storage Facility: A structure or group of structures containing separate storage spaces leased or rented on an individual basis. (Added March 10, 2009.)

Service Area: The area adjacent to a building entrance, usually in the rear, through which supplies are received and waste materials are moved.

Sign: Signs shall be defined as in Section 318 of this Ordinance. (Amended March 8, 2011.)

Small Engine Repair Facility: Enclosed establishment for the repair of new and used small engines, such as, but not limited to, snowblowers, chainsaws, and lawnmowers. (Added March 10, 2009.)

Special Exception: A principal use of a building or lot which may be permitted under this Ordinance only upon application to the Board of Adjustment and subject to the approval of that Board, and only in cases where the words "Special Exception" in this Ordinance pertain.

Stable, Boarding and Riding: A building and grounds for boarding horses, and/or for the promotion of horseback riding for a fee.

Street or Public Street: A public right-of-way which the town or state has the duty to maintain regularly or a right-of-way shown on a subdivision plat approved by the Planning Board and recorded with the County Registry of Deeds which provides the principal means of access to abutting property.

Street Line: Boundary line of a street right-of-way as dedicated by subdivision plat or a deed of record. Where the width of the street is not established, the street line shall be considered to be twenty-five (25) feet from the center line of the traveled way.

Structure: Anything constructed or erected which requires a location on the ground, or an attachment to something having a location on the ground. Structure includes, but is not limited to a building, swimming pool and associated barrier/fence, manufactured home, billboard, or poster panel. It shall not include a minor installation such as a fence six feet or less in height, signs as described in Section 318 of this Ordinance, mail box, flagpole or accessory building of 100 square feet or less. (Amended March 13, 2001, and March 13, 2007, March 9, 2010, and March 8, 2011.)

Theater: A building or part of a building used to show motion pictures or for drama, dance, musical, or other live performances. A

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maximum of two screens/stages/performance venues shall be permitted.  
(Added March 10, 2009.)

Travel Trailer: A vehicular, portable, non-self-propelled structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational, and vacation uses, having a body width not exceeding eight (8) feet, and a body length not exceeding forty (40) feet.

Use, Permitted: Use specifically allowed in a zoning district, excluding illegal uses and non-conforming uses.

Variance: Such departure from the terms of this Ordinance as the Board of Adjustment, upon appeal in specific cases, is empowered to authorize only under the terms of Section 705 and applicable statutes of the State of New Hampshire.

Vehicular Repair Facility: Enclosed establishment for the repair of new and used motor vehicles, trailers, motorcycles, recreational vehicles and boats. No retail sale of gasoline permitted except as incidental to the repair facility. (Amended March 10, 2009.)

Vehicular Sales Facility: Enclosed establishment for the display and sale of new and used motor vehicles, trailers, motorcycles, recreational vehicles and boats. No retail sale of gasoline permitted except as incidental to the sales facility. Outdoor display of new and used vehicles may be permitted. (Amended March 10, 2009.)

Veterinary Practice: A place where animals are given medical care and the boarding of animals is limited to short-term care incidental to the hospital use. (Added March 10, 2009.)

Warehouse: A building or group of buildings, not to exceed 30,000 square feet in aggregate, used for the storage of goods or materials that may include the repackaging or distribution of goods but does not include the retail sale of goods. (Amended March 10, 2009.)

Woodlot: A tract of land available for growth and harvesting of trees and tree products including either unmanaged tracts or those managed as tree farms. For the purposes of this Ordinance, a woodlot and the harvesting of trees therefrom and subsequent sale of the trees, either as cordwood or logs, shall be considered an agricultural activity, not requiring review or approval under the Non-Residential Site Plan Review Regulations.

Yard: That portion of a lot not occupied by a building or structure. Porches, whether enclosed or unenclosed, shall be considered as part of the main building and shall not project into a required yard.

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Yard, Front or Setback Depth: The depth of the front yard shall be measured from the street line, being 25 feet from the center line of the traveled way, to the front line of the building.

Yard, Rear Depth: The depth of the rear yard shall be measured from the rear lot line to the rear line of the rearmost building.

Yard, Side Depth: The depth between the side of the principal building or accessory building and the nearest side lot line.

Yard Sale: The display and sale of excess items originating from a family at a residence. More than four such sales within any consecutive 12 month period or such sales that include items purchased specifically for such a sale, shall be considered a Home Business and must comply with Section 319 of this Ordinance. Other terms to describe such sales are garage, lawn, barn, tag, and attic sales which shall have the same meaning. (Added March 12, 2013.)

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**ARTICLE VII            ADMINISTRATION AND ENFORCEMENT**

Section 701            Building Permit

Section 701.1

Written application for a building permit must be filed by the owner, his agent, or lessee with the Town of New Boston for any of the following, and except as provided for emergencies under RSA 676:6, until a building permit has been obtained from the Building Inspector (or, if the permit is denied, until the Board of Adjustment has directed that a permit be issued), none of the following shall be commenced:

- A. The erection or use of any new building, exterior sign or other structure.
- B. The alteration, restoration, moving or demolition of any building, structure, exterior sign, or part thereof.
- C. Any activity requiring permit as described in the 'Building Code for the Town of New Boston, as adopted March 11, 1986', and as amended. (Amended March 9, 2004.)
- D. Any use of premises which is not provided for in this Ordinance, including but not limited to, a change in the nature of the use of any building or premises to a non-conforming use from any lawful prior use, the expansion of any existing lawful non-conforming use, or any change in lot size or shape which would result in a violation of area or dimensional regulations.

Section 701.2

Application for a building permit shall be upon an appropriate form to be prescribed by the town and shall be accompanied by:

- A. Plans, drawn to scale, showing the actual shape, lot lines, setback lines, dimensions, and location of the lot to be used, of existing buildings upon it, of alterations proposed for existing buildings, and of proposed new buildings.
- B. Information as to the existing and intended use of each building, lot, or part thereof and as to the number of families, lodgers, or other occupants any building upon the premises is designed to accommodate.
- C. The fee schedule for a building permit shall be established by the Selectmen. Said fee shall accompany each application for a building permit.



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- D. Written certification from a licensed land surveyor, to be submitted by the property owner, verifying that the measurements stated on a building permit and/or plot plan are accurate. This will be required when the measurements submitted are 100 feet or less on the front setback and/or 50 feet or less on the side or rear setbacks to any building or structure. The Selectmen may authorize the Building Inspector to waive the requirements of this section at his discretion.

Section 701.3

The Building Inspector shall determine whether an application for permit is in compliance with a permitted use as defined in this Ordinance. If the Building Inspector determines that it is, the application for permit shall be approved and a permit issued. If the Building Inspector determines that it is not, the application shall be denied. The Building Inspector shall act upon any application within thirty (30) days after it has been filed. No building permit may be issued until Non-Residential Site Plan Review is approved by the Planning Board on any application which would require Non-Residential Site Plan Review.

Section 701.4

Issuance of a building permit pursuant to this Ordinance constitutes approval by the Town of the proposed use only under the requirements of this Zoning Ordinance.

Section 701.5

A building permit shall become void if active and substantial construction is not begun thereunder within twelve (12) months from the date of issuance of the permit.

Section 701.6

No permit issued hereunder shall be transferable to a subsequent owner.

Section 701.7

On approval by the Board of Adjustment of a variance or special exception, the Building Inspector shall issue a building permit as of the date of approval of the Board of Adjustment.

Section 702        Certificates of Occupancy

Section 702.1

It shall be unlawful to use or occupy or permit the use or occupancy

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of any land or structure, or part thereof created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure after the effective date of this regulation, until a certificate of occupancy is issued therefor by the Building Inspector stating that the proposed use of the structure or land conforms to the requirements of these regulations. A certificate of occupancy shall not be needed for the normal repair or redecorating of structures.

Section 702.2

Applications for a certificate of occupancy shall be made to the Building Inspector on forms provided by him for that purpose, by the owner, his agent, or lessee.

Section 702.3

Prior to the issuance of any certificate of occupancy, the Building Inspector shall first satisfy himself that the proposed use of the structure or land conforms to the requirements of this Ordinance.

Section 703        Building Inspector

Section 703.1

The administrative and enforcement officer for this Ordinance shall be known as the Building Inspector who shall be appointed by the Board of Selectmen. The Building Inspector shall administer the Zoning Ordinance literally and shall not have the power to permit any use of land or buildings which is not in conformance with this Ordinance. Until a Building Inspector is appointed or if a vacancy exists in the office of Building Inspector, the Board of Selectmen shall perform these duties.

Section 704        Enforcement and Penalty

Section 704.1

This Ordinance shall be enforced by the Building Inspector, if any building or use of land is, or is proposed to be, erected, constructed, reconstructed, altered, converted, maintained, or used in violation of this Ordinance. The Building Inspector shall institute, in the name of the Town, any appropriate action, injunction or other proceeding to prevent, restrain, correct, or abate such construction or use or to prevent in or about the premises any act, conduct, business, or use constituting a violation.

Section 704.2

In case any building or structure or part thereof is or is proposed to be erected, constructed, altered, or reconstructed, or any land is or

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is proposed to be used in violation of this Ordinance, the Building Inspector, or the owner of any adjacent or neighboring property who would be especially damaged by such violation, may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent or enjoin or abate or remove such unlawful erection, construction, alteration, or reconstruction.

Section 704.3     Penalty

Any person who violates any of the provisions of this title, or any local ordinance, code or regulation adopted under this title, or any provision or specification of any application, plat, or plan approved by, or any requirements or conditions of a permit or decision issued by, any local administrator or land use board acting under the authority of this title:

- A. Shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.
- B. Shall be subject to a civil penalty not to exceed Two Hundred Seventy Five (\$275.00) Dollars for each day that such violation is found to continue after the conviction date or after the date on which the violator receives written notice from the municipality that he is in violation, whichever is earlier. (Amended March 13, 2001.)
- C. In general as provided for in RSA 676:15 and 676:17.

Section 705       Board of Adjustment

There shall be a Board of Adjustment, as provided by the statutes (RSA 673:1) of the State of New Hampshire, whose members and alternates shall be appointed by the Board of Selectmen.

Section 705.1     Powers of Board

The Board of Adjustment shall have the following powers, as well as any other power conferred upon such Boards by the statutes of the State of New Hampshire.

- A. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Building Inspector in enforcement of this Ordinance.
- B. To hear and decide special exceptions to the terms of this Ordinance upon which the Board of Adjustment is required to pass as provided herein. (See Section 206.)
- C. To authorize upon appeal in specific cases such variances from the terms of this Ordinance as will not be contrary to the public

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interest where owing to special conditions a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship and so that the spirit of the Ordinance shall be observed and substantial justice done. In so doing, the Board of Adjustment may attach such conditions and safeguards as it deems necessary to protect the neighborhood and community.

- D. To grant an equitable waiver of dimensional requirement when a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by this Ordinance. The Board of Adjustment shall, upon application by, and with the burden of proof on the property owner, grant the equitable waiver from the requirement, if and only if the Board makes all of the findings as listed in RSA 674:33-a. (Section added March 13, 2001.)
- E. In exercising the above-mentioned powers, the Board of Adjustment may, in conformity with the powers granted to it under RSA 674:33, reverse or affirm wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and to that end shall have all the powers of the Building Inspector from whom the appeal is taken. (Amended March 13, 2001.)
- F. The concurring vote of three members of the Board shall be necessary to reverse any action of the Building Inspector or to decide in favor of the applicant on any matter upon which the Board is required to pass under this Ordinance. (Amended March 13, 2001.)

**Section 705.2      Rules Governing Proceedings**

- A. All appeals and applications to the Board of Adjustment shall be in writing, on forms prescribed by that Board. Every appeal or application shall refer to the specific provision of the Ordinance involved, and shall set forth the interpretation, the special exception, or the variance for which application is made. The cost of advertising and mailing shall be payable by the appellant prior to the required public hearing.
- B. Whenever a notice of appeal is filed for a variance or an application is made for a special exception, the Board of Adjustment shall hold a public hearing, and notice shall be given as follows: The appellant and all the abutters shall be notified of the hearing by certified mail stating the time and place of the hearing, and such notice shall be given not less than 5 days before the date fixed for the hearing of the appeal. A public notice of the hearing shall be placed in a newspaper of general circulation in New Boston not less than 5 days before the date fixed for the hearing of the appeal. The public hearing shall be held within 30 days of the receipt of the notice of appeal. Any

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party may appear in person or by agent or attorney at the hearing of an appeal. In addition to the notices sent as described above, the Board shall also send such a notice to the Planning Board and the Board of Selectmen, and either Board shall be a proper party to appear and to be heard upon any such appeal or application. Upon the entry of any decision, report, or order in such a proceeding, the Board of Adjustment shall cause a copy to be sent to the Planning Board. In those proceedings before the Board of Adjustment at which the Planning Board submits its recommendations, such recommendations shall be in the same format as that required by the Board of Adjustment in reporting its decision. The Board of Adjustment shall state in writing in sufficient detail its reason as to the granting or denial of a special exception or variance with particular reference to the standards or conditions applicable thereto.

- C. The Board shall hear all abutters desiring to submit testimony and all non-abutters who can demonstrate that they are affected directly by the proposal under consideration. The Board may hear such other parties as it deems appropriate.
- D. The Board of Adjustment shall adopt rules in accordance with the provisions of this Ordinance. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Office of the Board of Adjustment and shall be a public record.

Section 706      Variance

Section 706.1

The Board of Adjustment may, on an appeal, grant a variance from the provisions of this Ordinance, if all the following facts are found by the Board of Adjustment and such finding is specified in its decision:

- A. That there are unique physical circumstances or conditions including irregularity, narrowness or shallowness of lot, size or shape or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the Ordinance in the neighborhood or district in which the property is located.
- B. That because of such physical circumstances or conditions there is no possibility that the property can be used in strict conformity

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with the provisions of this Ordinance for a permitted use of the applicant's choice and that the authorization of a variance is therefore necessary to enable reasonable use of the property.

- C. That the variance if authorized will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare.
- D. That the variance if authorized will represent the minimum variance that will afford reasonable relief; and,
- E. That the spirit of the Ordinance shall be observed and substantial justice done.

In authorizing a variance, the Board of Adjustment may attach such conditions and safeguards as it deems necessary to protect the neighborhood and the community, including but not limited to, a time limit when the variance will expire if not utilized.

Section 707      Fee

The fee for any permit issued under this Ordinance shall be established by the Board of Selectmen. Such fee shall accompany each application for a permit.

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ARTICLE VIII MISCELLANEOUS PROVISIONS

Section 801 Severability Clause

The invalidity of any section of this Ordinance shall not invalidate any other section or provision thereof.

Section 802 Effective Date

This Ordinance shall take effect immediately upon its adoption.

Section 803 Amendments

This Ordinance and its accompanying maps may be amended in accordance with the provisions of the applicable statutes of the State of New Hampshire.

Section 804 Validity

Whenever the provisions of this Ordinance or rulings made under the authority hereof differ from those of other Ordinances or regulations of the Town, that provision or ruling which imposes greater restriction or higher standard shall govern.

**\*AMENDED**

March 12, 1991  
March 10, 1992 (Zoning Map only)  
March 9, 1993  
March 14, 1995  
March 12, 1996 (Zoning Map only)  
March 11, 1997 (Zoning Map only)  
March 10, 1998  
March 13, 1999  
March 14, 2000  
March 13, 2001  
March 12, 2002  
March 11, 2003  
March 9, 2004  
March 8, 2005  
March 14, 2006  
March 13, 2007  
March 11, 2008  
March 10, 2009  
March 9, 2010  
March 8, 2011  
March 13, 2012  
March 12, 2013